Office-Supreme Court, U.S.
FILED
OCT 12 1982
ALEXANDER L. STEVAS,
CLERK

NO. 82-720

In the SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1982

NORMAN ASHCROFT, et. al.,
Petitioners
vs.
THE UNITED STATES DEPARTMENT OF INTERIOR,
et al.,
Respondents
vs
THE UNITED STATES OF AMERICAN, et. al.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH COURT

WILLIAM J. DARLING
Counsel of Record
EAVES AND DARLING, P.A.
1516 San Pedro NE
Albuquerque, New Mexico
87110
(505) 262-2661
Counsel for Petitioners

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NORMAN ASHCROFT, et al.,

Petitioners,

vs. No.

THE UNITED STATES DEPARTMENT
OF THE INTERIOR, et al.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF THE APPEALS
FOR THE NINTH CIRCUIT

QUESTIONS PRESENTED FOR REVIEW

1. Whether a business which is operating on an enclave of fee patent land which existed before the creation of the reservation or was withdrawn from the reservation, which was later surrounded by the Navajo reservation and which does only an insignificant amount of business with reservation Indians, is subject to licensing and regulation under the Indian Traders Statutes, 25 U.S.C., §§ 261-264, and the Regulations promulgated pursuant to those statutes?

2. Whether fee patent land which is now surrounded by the Navajo reservation, but which was patented either before the creation of the reservation or was withdrawn from the reservation at a later date, constitutes "Indian country" within the meaning of the Indian Traders Statutes, 25 U.S.C., §§ 261-264?

PARTIES

NORMAN ASHCROFT d/b/a Querino Canyon Superette; CLYDE A. BAKER, d/b/a Baker Chevron; EVERETT EDMUNDS & WAYNE HARRIS, d/b/a Ganado Chevron; RICHARD HARRIS, d/b/a Two Story Trading Post; MRS. LESTER (ANNA) LEE; JIM McAVOY, d/b/a St. Michaels Towing; DWIGHT McGEE, d/b/a Aneth Trading Post; ARMOND ORTEGA, d/b/a Indian Ruins; FREDDY SLATTON, d/b/a Tomahawk Indian Store; BRADY SMITHSON, d/b/a Burnt Water Trading Post; HOMER THOMPSON, d/b/a Tuller Cafe; and ARTHUR KEENAN,

Plaintiffs/Appellees,

v.

THE UNITED STATES DEPARTMENT OF THE INTERIOR, THE HONORABLE CECIL D. ANDRUS, Secretary of the Department of Interior; and THE BUREAU OF INDIAN AFFAIRS, an agency of the United States of America and a Division of the Department of Interior,

Defendants/Appellants.

ATKINSON'S LTD. OF ARIZONA, an Arizona corporation, d/b/a Gilbert Ortega's Cameron Trading Post,1

Plaintiffs/Appellees,

v.

THE UNITED STATES OF AMERICA AND THE HONORABLE CECIL D. ANDRUS, Secretary of the Interior,

Defendants/Appellants.

---

1 Also doing business as and known as: Atkinson's Trading Company, Inc.; Joe Atkinson, a/k/a Edwin J. Atkinson; Atkinson's Trading Company of Arizona, Inc.; Atkinson's Ltd. of New Mexico; Atkinson's Ltd. of Arizona.

TABLE OF CONTENTS

	Pages
Questions Presented For Review	i
Parties	ii
Table of Authorities	vi
Introduction	1
Opinions Below	1
Jurisdiction	2
Statutes, Regulations and Treaties Involved	2
Statement of the Case	3
Reasons For Granting Certiorari	8
I. The Decision Below Conflicts With The Decision of This Court In Montana v. The United States	8
II. The Circuit Court Decided An Important Question Pertaining To The Indian Traders Statutes, 25 U.S.C, §§ 261-264, Which Has Not Been, But Should Be, Settled By This Court	25
Conclusion	32
Appendix A: Ninth Circuit Decision .	33
Appendix B: District Court Opinion .	43
Appendix C: Copy of the Judgment ...	58

Appendix D: Order Denying Rehearing 60

Appendix E: 25 U.S.C. §§ 261-264 ... 62

Appendix F: 25 C.F.R. Part 251 and 25 C.F.R. Part 252 ... 63

Appendix G: Act of July 22, 1790, 1 Stat. 137 82

Appendix H: Act of March 30, 1802, 2 Stat. 139 84

Appendix I: Act of May 6, 1822, 3 Stat. 683 93

Appendix J: Act of June 30, 1834, 4 Stat. 729 95

Appendix K: Treaty with the Navajo, 15 Stat. 667 (1868) .. 102

Certificate of Service 108

Entry of Appearance 110

TABLE OF AUTHORITIES

CASES

	Pages
Bates v. Clark, 95 U.S. (5 Otto) 204 (1877)	17
DeCouteau v. Distirct County Court for Tenth Judicial District, 420 U.S. 425 (1975)	19
Ex Parte Crow Dog, 109 U.S. 556, 561 (1883)	16
Kinnerly v. District Court, 400 U.S. 423 (1976)	21
Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 462 (1976)	22
Montana v. The United States, 450 U.S. 544, 101 S.Ct. 1245 (1981).	8,9,11 12,20,21, 22,23,24, 25
Rider v. LaClair, 138 P. 3 (Wash. 1914)	15
Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977)	19
Seymour v. Superintendent, 368 U.S. 35] (1962)	20
Taylor v. United States, 44 F.2d 53] (9th Cir. 1930)	15
United States v. Forty Three Gallons of Whiskey, U.S. (3 Otto) 188 (1876)	17

Warren Trading Post Company v. Arizona State Tax Commission, 380 U.S. 685 (1965) 14

STATUTES

4 Stat. 729. Act of June 30, 1834 16,17

48 Stat. 960-62. Act of June 14, 1934 18

18 U.S.C. § 1151 16,19,20

25 U.S.C. §§ 261-264 (Indian Traders Statutes) 11,14,15, 19,21,22, 25,26,27, 28,29,30, 31

25 U.S.C. § 261 25

25 U.S.C. § 262 25

25 U.S.C. § 263 25

25 U.S.C. § 264 16,19,26

TREATIES

15 Stat. 667. Treaty Between The United States Government and the Navajo Nation of 1868 18

MISCELLANEOUS CITATIONS

25 C.F.R. § 251.11 ..... 22,23,27 28

25 C.F.R. § 251.3 27

INTRODUCTION

The Petitioners, Norman Ashcroft, doing business as Querino Canyon Superette; Armond Ortega, doing business as Indian Ruins; and Atkinson's Ltd. of Arizona, an Arizona Corporation, doing business as Gilbert Ortega's Cameron Trading Post, pray that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Ninth Circuit rendered in these proceedings on June 9, 1982, and modified on September 2, 1982 (rehearing denied).

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, Norman Ashcroft, et al., v. The United States Department of the Interior, et al., ___ F.2d ___ (9th Cir. 1979) appears at Appendix A, pages 33 through 43. The opinion of the United States District Court for the District of Arizona, Norman Ashcroft, et al, v. The

United States Department of the Interior, et al., 513 F.Supp. 595 (D. Ariz. 1981), appears at Appendix B, infra, pages 43 through 58.

JURISDICTION

The Judgment of the Court of Appeals for the Ninth Circuit was entered on June 9, 1982. A timely Petition for Re-hearing was denied on September 2, 1982, and a timely Motion to Stay Issuance of the Mandate pending this application for certiorari was filed on September 8, 1982. This Court's jurisdiction is invoked under Supreme Court Rule 19 and 25 U.S.C. §§ 261-64.

STATUTES, REGULATIONS AND TREATIES INVOLVED

The following statutes, regulations and treaties, because of their length, are reproduced as appendices:

1. 25 U.S.C. §§ 261-264 (Appendix E).

2. 25 C.F.R. Part 251 and 25 C.F.R. Part 252 (Appendix F).

3. Act of July 22, 1790, 1 Stat. 137 (Appendix G).

4. Act of March 30, 1802, 2 Stat. 139 (Appendix H).

5. Act of May 6, 1822, 3 Stat. 683 (Appendix I).

6. Act of June 30, 1834, 4 Stat. 729 (Appendix J).

7. Treaty with the Navajo, 15 Stat. 667 (1868) (Appendix K).

STATEMENT OF THE CASE

The facts relevant to the questions presented by this Petition are uncontroverted and therefore may be introduced to the Court in a summary fashion.

Most of the Petitioners' businesses, including Atkinson's Ltd. of Arizona (hereinafter "Atkinson's") are located on primary highways passing through the reservation. (Stip. Facts No. 6 and 7.) Atkinson's business is operated for and does almost all of its business with visitors to the Grand Canyon area and other travelers, who are traveling interstate, or who are

using the facilities of Interstate Commerce. The minimum number of sales that are made to Indians from the surrounding reservation lands are an insignificant part of Atkinson's business. (Stip. Fact No. 6.) The remaining Petitioners do a substantial part of their business with non-Indians (Stip. Fact No. 7.)

Prior to the filing of this action, the Petitioners had been notified by the Bureau of Indian Affairs (hereinafter "BIA") that they must comply with the procedures set forth in 25 C.F.R. Part 252. The stated purpose of 25 C.F.R. Part 252 is to "prescribe rules for the regulation of reservation businesses for the protection of Indian consumers on the Navajo, Hopi and Zuni reservations" as required by the Indian Traders Statutes, 25 U.S.C. §§ 261-264.

A business owned by one of the Petitioners had already been closed by the BIA, and the Petitioners, except Atkinson's,

alleged that the BIA had threatened to close the other businesses of the Petitioners. On March 3, 1978, the District Court issued a Temporary Restraining Order prohibiting the enforcement of 25 C.F.R. Part 252 as it applied to the other Petitioners. The parties stipulated that the Restraining Order would remain in effect until the Court ruled on the merits of the case. On May 17, 1978, Atkinson's filed an action similar to one commenced on February 23, 1978 by the other Petitioners herein who are non-Indian owners or operators of businesses situated on fee patent land surrounded by the Navajo reservation, against officials of the Department of the Interior seeking a temporary restraining order in the District Court to halt the enforcement of 25 C.F.R. Parts 251 and 252 against its business.

The District Court consolidated the action filed by Atkinson's with the action filed by the other Petitioners on June 27,

1978. Cross motions for summary judgment based on a set of Stipulated Facts were filed by the various parties in February, 1980. The District Court ordered that the motions for summary judgment be submitted on the pleadings and the Stipulated Facts, and on March 17, 1981, the Court issued a permanent injunction against the enforcement of 25 C.F.R. Part 252 against the Petitioners. The District Court held that the Petitioners' businesses were not "reservation businesses" within 25 C.F.R., § 252.3(l) and that businesses on enclaves of fee patent land within the exterior boundaries of the reservations were not <u>on</u> the reservation. The District Court found that the proper scope of the regulations promulgated under the Indian Traders Statutes was limited to businesses which were on lands subject to sovereign rights of the tribe, and that these rights extend only to tribal or trust lands, but not to fee patent property which is not on the reservation.

The United States Department of the Interior and the BIA appealed the decision of the District Court, and the United States Court of Appeals for the Ninth Circuit reversed. The Circuit Court held that businesses conducted on non-Indian fee land within the exterior boundaries of the Navajo reservation are subject to the regulations at 25 C.F.R. Parts 251 and 252 enacted pursuant to the Indian Traders Statutes. The Circuit Court held that fee land within reservation boundaries is in fact "on the reservation" and that Indian tribes retain inherent sovereign power in accordance with the authority recognized in the Indian Traders Statute Regulations even though that authority be asserted over fee patent land which was patented while outside of the exterior boundaries of the reservation, but which was subsequently made an enclave within the boundaries of the reservation. In so finding, the Circuit Court relied on language

contained in this Court's decision in Montana v. United States, 450 U.S. 544, 565 (1981). The Circuit Court concluded that the Petitioners' businesses are subject to licensing and regulation under the Indian Traders Statutes because the businesses are subject to the sovereign power of the Navajo Nation and that this power includes the power to regulate commerce among non-Indians on enclaves of fee patent land along a major highway which passes through the Indian reservation.

REASONS FOR GRANTING CERTIORARI

POINT I

THE DECISION BELOW CONFLICTS WITH THE DECISION OF THIS COURT IN MONTANA V. THE UNITED STATES.

In Montana v. The United States, 450 U.S. 544, 101 S.Ct. 1245 (1981), this Court held that an Indian tribe may not regulate the activities of non-members except in very specific circumstances. Those circumstances are: (1) where there is a specific

Congressional delegation of authority; (2) where non-Indians enter consensual relationships on the reservation with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements; or (3) where the conduct of non-Indians occurs on the reservation and threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. Id. at 565-66. The latter two circumstances apply only if the conduct to be regulated occurs "on the reservation." Id.

It was uncontroverted below that no express grant of Congress delegates authority to the Navajo Nation to regulate any business which is not on their reservation. The Circuit Court cited the latter two circumstances as support for its ruling that "a tribe retains some elements of sovereignty over all land within reservation boundaries, absent the exclusive jurisdiction of another

tribe or that of the federal government (such as the establishment of a military base)." ____ F.2d ____ at ____; Appendix A. pp. 37-38. Accordingly, the Circuit Court determined that businesses operated by non-Indians on fee patent land, whose transactions are almost exclusively with non-Indian travelers to the Grand Canyon area, are subject to the sovereign power and civil authority of the Navajo Nation even though the patented land had existed before the creation of the reservation or had been withdrawn from it.

The Circuit Court assumed, almost without discussion, that the businesses of Atkinson's and the other Petitioners were located on the reservation because they were surrounded by the reservation. In making this assumption, the Circuit Court acknowledged that there can be jurisdictional enclaves in the case of other tribes or the federal government but impliedly denied that such enclaves could exist with respect to privately owned land.

(It should be noted here that the Hopi reservation is entirely surrounded by the Navajo reservation.) By this reasoning, the Circuit Court rendered the three limiting circumstances of the Montana decision meaningless because it effectively overlooked an analysis of whether the Petitioners' businesses are "on the reservation." Consequently, the Circuit Court concluded that the BIA and the United States Department of the Interior have authority to require the Petitioners to conform with regulations promulgated under the Indian Traders Statutes.

The central issue, therefore, is whether Atkinson's and the other Petitioners have their businesses located "on the reservation" or whether their land is a jurisdictional enclave which is surrounded by the reservation but not on it.

The distinction implicit in the Montana case that clarifies this issue is whether or not the fee land in question is Indian

country. Only land which is Indian country, regardless of ownership, may be deemed "on the reservation." The Circuit Court overlooked this distinction as it relates to the jurisdictional limits which the Indian Trader Statutes impose on the BIA.

The Montana case involved a suit by the United States in its own right and as fiduciary on behalf of the Crow Tribe to quiet title to the bed and banks of the Big Horn River. The United States District Court for the District of Montana declared that the State of Montana owned the bed and banks of the river. The Court of Appeals for the Ninth Circuit reversed. On Writ of Certiorari, this Court held that, inter alia, the Crow Tribe had no power to regulate non-Indian fishing and hunting on reservation land owned in fee by nonmembers of the Tribe.

In Montana, the fee land in question had been specifically designated as part of the reservation. Congress had then authorized

the issuance of patents in fee to individual Indians with the ability to alienate the land to non-Indians after holding it for twenty-five (25) years. This land clearly did not exist as fee land before the creation of the reservation and there is nothing to indicate that it was later withdrawn from the reservation. This land was still Indian country and was still part of the reservation even though it had passed to non-Indian ownership. As such it was subject to certain, limited aspects of trible jurisdiction.

With respect to the lands in the present case, however, the United States stipulated that they "either existed before the creation of the reserveration or were withdrawn from the reservation after its creation". (Stip. Fact No. 5.) This means that they are not Indian country and are not part of the reservation, as will be explained below.

Despite the obvious question of how a parcel of land can continue to be on the

reservation if it has been withdrawn from the reservation, the Circuit Court ignored this distinction and explained it away in a footnote.

> "There is no indication in the record that the tracts in question differ in any way from other non-Indian fee land within a reservation." App. A, p. 7, n. 1.

In making this statement, the Circuit Court ignored the entire line of cases developed around the concept of "Indian country". Instead, it relies on the BIA's own interpretation of its regulations which designate those businesses that it has the jurisdiction to regulate and ignores the impossibility of a regulatory agency expanding its jurisdiction beyond that which it is granted by its authorizing statute.

The courts, in interpreting the Indian Traders Statutes, have consistently maintained a distinction between the act of trading with Indians and the act of trading with Indians on an Indian reservation. See,

e.g., Warren Trading Post Company v. Arizona State Tax Commission, 380 U.S. 685 (1965); Taylor v. United States, 44 F.2d 531 (9th Cir. 1930); and Rider v. LaClair, 138 P. 3 (Wash. 1914). In Rider v. LaClair, the Washington Supreme Court states:

> ...[O]ne engaged in business of merchandising at the Two of Wapato, and who bought and sold therein, was not a trader requiring a license to trade in the Indian country. Wapato is located within the boundaries of the Yakima Indian Reservation, upon land to which Indian title has been extinguished. The extinction of Indian title seems to be the test for determining the character of land within or adjacent to an Indian reservation ....
>
> A trader or seller of merchandise upon eliminated land is not a trader within the Indian country, requiring a license [under the predecessor of the present Indian Trader Statutes]. 138 P. at 5-6.

According to the line of cases developing around this distinction, tribal sovereignty and jurisdiction continue to exist over land that is still Indian country or that is on the reservation, but does not extend to land that is not Indian country or that has never

been part of the reservation or has been excluded from the reservation.

Those cases, whether they are based on the definition contained in the predecessor of the current 25 U.S.C. § 264 or the definition contained in 18 U.S.C. § 1151, have uniformly held that fee land owned by non-Indians which existed before the reservation was created or which was later withdrawn from the reservation is not Indian country. Although the present § 264 does not define "Indian country", its predecessor, Act June 30, 1834, 162, Section 1 did contain a definition of the term. That definition can be used to determine the present meaning of the term "Indian country" because "it is an admitted rule in the interpretation of statutes that clauses which have been repealed may still be considered in construing the provisions that remain in force ...." Ex Parte Crow Dog, 109 U.S. 556, 561 (1883). Under the Act of 1834, all that part of the United

States west of the Mississippi and not within the states of Missouri and Louisiana or the territory of Arkansas was deemed "Indian country" until and unless the Indian title had been extinguished in which event the territory was no longer Indian country. See, United States v. Forty Three Gallons of Whiskey, 93 U.S. (3 Otto) 188 (1876). According to the decision of this Court [United States Supreme Court] in Bates v. Clark, 95 U.S. (5 Otto) 204 (1877), the land described in the Act of 1834:

> Was Indian country whenever Indian title had not been extinguished and it continues to be Indian country so long as Indians had title to it, and no longer. As soon as they parted with the title, it ceased to be Indian country, without any further act of Congress, unless by the treaty by which the Indians parted with their title, or by some act of Congress, a different rule was made applicable to the case. Id. at 208.

Under the definition of Indian country established in these cases, Atkinson's premises and those of the other Petitioners are not located in Indian country because Indian

title to this land was extinguished by the treaty between the United States Government and the Navajo Nation of 1868 (15 Stat. 667), which defined the extent of the Navajo reservation to be much smaller than it is today. The portion of the Navajo reservation which surrounds Atkinson's premises was added to the reservation in 1934 by the Act of June 14, 1934, Ch. 521, 48 Stat. 960-62, which redefined the extent of the Navajo Indian Reservation in Arizona and provided that "all valid rights and claims initiated under the public land laws prior to approval hereof involving any lands within the area so defined shall not be affected by this Act". Accordingly, Indian title to the land which Atkinson's occupies was extinguished by the treaty of 1868 and was not restored by the Act of 1934. The land owned by the other Petitioners has a similar history. The premises upon which Atkinson's and the other Petitioners do business, therefore, do not

constitute Indian country as that term is used in 25 U.S.C. § 264.

Even if the definition of Indian country in 18 U.S.C. § 1151 should apply to the Indian Trader Statutes (despite it being limited by its own terms to the Federal Criminal Code), the BIA would still be unable to assert jurisdiction over Atkinson's and the other Petitioners. The cases construing the definition found in the Federal Criminal Code have clearly stated that a particular piece of land is not within Indian country if it was not under Indian ownership at the time that the land surrounding it became reservation land, or, if it was later withdrawn from the reservation by congressional act, regardless of whether that land may be surrounded by reservation land. See, DeCouteau v. District County Court for Tenth Judicial District, 420 U.S. 425 (1975); Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977). This result obtains even though one

of the purposes of the broad definition of Indian country contained in 18 U.S.C. § 1151 was to avoid checkerboard jurisdiction. See, Seymour v. Superintendent, 368 U.S. 351 (1962).

According to the stipulated facts, the premises upon which Petitioners' businesses are located were excluded from the reservation or existed before the reservation and are therefore not Indian country. On the other hand, land, such as that in Montana, which became non-Indian owned fee land after the creation of the reservation and which was never withdrawn from the reservation continues to be Indian country and certain aspects of tribal jurisdiction continue, subject to the limitations set forth by this Court in Montana.

Once it is determined that the Petitioners' land is not Indian country, the error of the Circuit Court's decision is made clear. The Circuit Court agrees with the District Court that the proper scope of the

regulations is limited to businesses which are on land subject to the sovereign rights of the tribe but disagrees with the District Court that these sovereign rights extend only to tribal or trust lands. ___ F.2d at ____, n.2; Appendix A, p. 41, n.2. The Circuit Court utterly fails to decide the crucial question whether Petitioners' lands are Indian country. Absent such a determination, it is impossible to conclude that Petitioners' businesses are "on the reservation" and subject to regulations promulgated under the Indian Traders Statutes. Following the rule in Montana, the proper scope of Indian Trader regulations is limited to businesses which operate on lands subject to inherent tribal sovereignty, i.e., land which remains Indian country.

Recognition that tribal sovereignty extends no further than over Indian country land runs through all of the cases cited by the Circuit Court in support of its position. See especially, Kinnerly v. District Court,

400 U.S. 423 and Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 462 (1976).

As sole authority for its conclusion that fee patent land which is not Indian country is nevertheless "on the reservation" for purposes of the Indian Trader Statutes, the Circuit Court cites, in a footnote, 25 C.F.R. § 251.11 (_____ F.2d _____, n.2; Appendix A, p. 41, n.2). 25 C.F.R. § 251.11 provides:

> "The license period shall correspond to the period of the lease or permit held by the licensee on restricted Indian land except that where the proposed licensee is the owner ... [of] the land on which the business is to be conducted, the license period shall be fixed by the Commissioner....

The Circuit Court took this to mean that non-Indian owned fee land is always within the contemplation of the regulation. Such a presumption is not required to fairly construe 25 C.F.R. § 251.11. The land referred to in this section of the regulations could be Indian country land owned by a non-Indian. The Montana case clearly

recognizes that a non-Indian might be entitled to own Indian country land in fee. It does not follow that all fee land, even within the boundaries of a reservation, is Indian country land. 25 C.F.R. § 251.11 does not expressly apply to land which is owned by non-Indians and which existed before the reservation was created or which was withdrawn from the reservation. Therefore 25 C.F.R. § 251.11 does not necessarily apply to the Petitioners' land, and the attempt of the Circuit Court to make it apply is circular.

The Circuit Court was correct to rely upon Montana v. The United States for the disposition of the appeal below. Its interpretation and application of the Montana decision, however, is incorrect since it missed the crucial distinction between the history of the land involved in Montana (which was Indian country land) and the land involved in this case (which was patented outside the reservation or withdrawn

therefrom and therefore not Indian country). From misinterpretations of this Court's ruling based on the Indian country distinction in Montana v. The United States, the Circuit Court reasoned to an incorrect and unjust conclusion in its decision below. This Court should issue a Writ of Certiorari in order to correct the conflicting opinions between this Court and the United States Court of Appeals for the Ninth Circuit, and to clarify its ruling in the Montana decision.

The Circuit Court incorrectly broadened the force and effect of Montana v. The United States to include Indian sovereignty over non-Indian business on non-Indian fee lands. This result, if left uncorrected, will lead to further extensions of civil jurisdiction under Indian sovereign powers which this Court clearly did not intend when it rendered the Montana decision. Accordingly, a Writ of Certiorari should be

issued in this case to avoid the result directed below and to preserve the correct rule of law as enunciated by this Court in Montana v. The United States.

POINT II

THE CIRCUIT COURT DECIDED AN IMPORTANT QUESTION PERTAINING TO THE INDIAN TRADERS STATUTES, 25 U.S.C., §§ 261-264, WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The Indian Traders Statutes provide authority to the executive branch of the federal government to regulate trade with the Indians and also place very definite limitations upon that authority. The first Section of the Indian Traders Statutes, 25 U.S.C., § 261 provides that the Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian Tribes. Section 262 states that "any person desiring to trade with the Indians on any Indian reservation" shall be granted a license if he or she properly qualifies. Section 263 authorizes the President to prohibit trade "into the country belonging to

any Indian tribe". Section 264 establishes forfeiture of merchandise and a penalty for any person who attempts to "reside in the Indian country or any Indian reservation, as a trader or to introduce goods or to trade therein without such license." The statutes focus not merely on trade with the Indians, but trade with those Indians "on any reservation" or "in Indian country".

The critical feature in the present case, as the District Court found, is that the land upon which Petitioners operate their businesses is not part of the reservation even though that land is surrounded by Indian reservation. In order to come within the purview of the Indian Traders Statutes, a person must not only trade with Indians, but must do so on the reservation. The Circuit Court found that fee land within reservation boundaries is in fact "on the reservation" for purposes of the Indian Traders Statutes. For its reason, the Circuit Court relied upon

the language of 25 C.F.R., § 251.11, supra. The Circuit Court further noted that Part 251 applies to "[a]ny person other than an Indian of the full blood." 25 C.F.R., § 251.3. Thus, the Circuit Court concluded, "this regulation suggests the regulation's general application to non-Indian fee land within the reservation". ___ F.2d ____ at _____, n.2; Appendix A, p. 42, n.2 (9th Cir. 1982). This analysis of a regulation promulgated under the Indian Traders Statutes, explained above as being incomplete and circular, allowed the Circuit Court to determine that the Petitioners' businesses were "on the reservation" for purposes of the Statutes.

The Circuit Court's ruling, even if validly reasoned, is based upon a false premise because it conflicts with the clear meaning and purposes of the Indian Traders Statutes. The plain meaning of the Indian Traders Statutes limits the Federal government's authority to that over persons

who "trade with the Indians on any Indian reservation". The Circuit Court determined that the Petitioners' businesses were "on the reservation" because 25 C.F.R., § 251.11 contemplates that a proposed Indian trader licensee may be the owner of the land on which the licensed business is to be conducted. This reasoning does not come close to resolving the important question which was presented before the Circuit Court. A person may own land for the purpose of conducting his business and still be subject to the Indian Traders Statutes if his land has the status of Indian country. This is the person to whom 25 C.F.R. § 251.11 applies because such land would be "on the reservation" and business conducted on such land would be "reservation business" subject to tribal jurisdiction.

It does not follow, however, that all persons who own fee land surrounded by a reservation, and who do business, are in

Indian country and therefore subject to the Indian Traders Statutes or the regulations promulgated thereunder, as the Circuit Court implies. The Circuit Court's decision, if extended to its logical limits, would make the Indian Traders Statutes applicable to a wider class of persons and businesses than is intended according to the statutes' own language. It would, for example make the Indian Traders Statutes applicable to all businesses in the entire City of Gallup, New Mexico, which is surrounded by the boundaries of the Navajo Reservation, but which is comprised of land that is clearly not Indian country.

The government's actions in seeking to require the Petitioners to comply with the licensing requirements or be closed for failure to comply, exceeds the authority granted them by the Indian Traders Statutes. As the Circuit Court's decision upholds the legality of the government's action, based

upon a broadening authority in the statutes, this Court should grant a Writ of Certiorari in order to resolve the conflict between the clear meaning of the statutes and the decision rendered below.

The stipulated facts show that Atkinson's engages in an insignificant amount of business with members of the Navajo Nation. The other Petitioners' businesses involve substantial transactions with travelers going to or from state and national parks, monuments, and forests within the Four Corners region. The District Court found that such a business obviously does not fall within the ambit of the Indian Traders Statutes. The Circuit Court reversed for the reason that the Petitioners' lands are all surrounded by the reservation and brushed aside Atkinson's lack of significent trade with the Indians as irrelevant.

We do not think that it was Congress' intent in enacting the Indian Traders

Statutes that the BIA be authorized to seize the merchandise of and close a business which does almost all of its trade with non-Indians. The position of the BIA would allow it to prohibit the Petitioners from trading with other non-Indians, an activity over which neither the BIA nor the tribe even arguably has any jurisdiction.

A fair reading of the Ninth Circuit's decision would enable the Federal government, and by extension under law, the Indian tribes themselves, to assert jurisdiction under the Indian Traders Statutes over all businesses regardless of the type of trade in which they are engaged, and regardless of an absence of impact which those businesses might have on Indian affairs. The Ninth Circuit's decision, therefore, has new and far reaching effect nationwide, and this Court is the proper one to decide whether such an effect was intended by Congress in enacting the Indian Traders Statutes. The importance of

this question, never before passed upon by this Court, merits review of the Ninth Circuit's decision.

CONCLUSION

For all the foregoing reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted this 8th day of October, 1982.

EAVES AND DARILNG, P.A.

By _____

WILLIAM J. DARLING
1516 San Pedro NE
Albuquerque, NM 87110
(505)262-2661

APPENDIX

APPENDIX A

OPINION OF THE NINTH CIRCUIT COURT OF APPEALS

Argued and Submitted March 5, 1982

Before: SNEED, POOLE and BOOCHEVER, Circuit Judges

POOLE, Circuit Judge:

This is an appeal from an order of the United States District Court for the District of Arizona enjoining the government from enforcing against appellees' businesses regulations enacting pursuant to the Indian Trader Statutes, 25 U.S.C. §§ 261-264.

Appellees are owners or operators of retail businesses on fee patent land within the exterior boundaries of the Navajo Reservation. Most of the businesses are general stores, some of which are located on main highways. These businesses cater to the tourist trade, but a small portion of their sales are made to reservation Indians.

The Bureau of Indian Affairs (the BIA) notified appellees that they were required to comply with the regulations. Thereafter the BIA issued cease and desist orders, and closed one of appellees' businesses. Appellees brought this action seeking injunctive and declaratory relief. On cross-motions for summary judgment, the district court held that the regulations did not apply to businesses on fee patent land located within the exterior boundaries of the reservation. Ashcroft v. Department of Interior, 513 F.Supp. 595 (D. Ariz. 1981). We disagree and accordingly reverse.

The Indian Trader Statutes were enacted to protect the Indians from unethical traders' exploitation of an essentially captive consumer market. See Rockbridge v. Lincoln, 449 F.2d 567 (9th Cir. 1971). Section 261 authorizes the Commissioner of Indian Affairs (Commissioner) to appoint "traders to the Indian tribes" and to promulgate rules specifying the kind, quantity

and prices of goods to be sold to the Indians. Under § 262, persons "desiring to trade with the Indians on any Indian reservation" must comply with regulations enacted by the Commissioner for the protection of the Indians.

In 1971, this court found that the Commissioner's authority to regulate Indian traders was not wholly discretionary and that the district court therefore had jurisdiction over a class action brought by the Navajo Indians to compel the Commissioner to adopt and enforce regulations governing Indian traders. Rockbridge v. Lincoln, 449 F.2d 567. In 1975, the Secretary of the Interior enacted regulations governing "LICENSED INDIAN TRADERS" and "BUSINESS PRACTICES ON THE NAVAJO, HOPI AND ZUNI RESERVATIONS." 25 C.F.R. Parts 251 and 252.

The wording of the regulations is arguably ambiguous. Section 252.3(l) describes "reservation business" as any business "within the exterior boundaries" of the

Navajo Reservation. Section 252.2 provides, however, that the regulations in Part 252 apply to persons engaged in business "on the reservation". Appellees argue that fee land within reservation boundaries is not "on the reservation".

"[S]tatutes passed for the benefit of dependent Indian tribes ... are to be liberally construed, doubtful expressions being resolved in favor of the Indians." Bryan v. Itasca County, 426 U.S. 373, 392 (1976). See Rockridge v. Lincoln, 449 F.2d at 571. And where an administrative regulation is ambiguous, the agency interpretation is controlling unless "plainly erroneous or inconsistent with the regulation". United States v. Larinoff, 431 U.S. 864, 872 (1977); United States v. Hells Canyon Guide Services, Inc., 660 F.2d 735, 738 (9th Cir. 1981). See Confederated Bands & Tribes v. Washington, 550 F.2d 443, 447 n.9 (9th Cir. 1977). We hold that the Department of the

Interior's interpretation of the regulations as applicable to non-Indian fee lands within reservation borders is neither plainly erroneous nor inconsistent with the language of the regulations.

The district court held that appellees' businesses were not "reservation businesses" within 25 C.F.R. § 252.3(l) and that businesses on fee patent land within the exterior boundaries of the reservation were not on the reservation.[1] Its ruling rests on a finding that the proper scope of the regulations was limited to businesses which were on lands subject to sovereign rights of the tribe, and that these rights extend only to tribal or trust lands.[2] Ashcroft, 513 F.Supp. at 597-98. This conclusion is unfounded.

A tribe retains some elements of sovereignty over all land within reservation boundaries, absent the exclusive jurisdiction of another tribe or that of the federal government (such as the establishment of a

military base). With respect to non-Indian fee land within the reservation, the tribe retains sovereign power to the extent necessary to protect tribal self-government or control internal relations. Montana v. United States, 450 U.S. at 564. This includes the power to regulate commerce with the tribe or its members within reservation boundaries.

> Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of non-members who enter into consensual relationships with the tribe or its members, through commercial dealings, contracts, leases or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

Id. at 565-66 (citations omitted); Cardin v. De la Cruz, 671 F.2d at 366. See also, Merrion v. Jicarilla Apache Tribe, 102 S.Ct. at 903, 905-07. Kennerly v. District Court, 400 U.S. 423 (Montana has no civil jurisdiction over fee land within the reservation). This inherent tribal sovereign power over non-Indian land renders the BIA's determination that such lands are "on the reservation" for purposes of the Indian Trader Statutes' regulations, both reasonable and consistent with the regulatory language.

Of equal importance is the fact that application of the regulations to fee land within the reservation is necessary to effect legislative intent. In Moe v. Confederated Salish and Kootenai Tribes, the Supreme Court held that Montana could not tax fee land within a reservation because "checkerboard jurisdiction", a result "contrary to the intent embodied in the existing federal statutory land of Indian jurisdiction", would

result. 425 U.S. at 478 (citing Seymour v. Superintendent, 368 U.S. 351 (1962)). The effect of a holding that scattered tracts within the Navajo reservation are not a part of the reservation for purposes of these regulations would be to create the very problem Moe sought to avoid. Moreover, to the extent that a contrary finding would encourage uncontrolled trader activities on fee lands within the reservation, the salutary goal of the statute which is to protect Indians from the sharp practices of unregulated traders would be thwarted.[3]

We therefore reverse the judgment of the district court and hold that businesses conducted on non-Indian fee land within the exterior boundaries of the Navajo Reservation are subject to the regulations at 25 C.F.R. Parts 251 and 252 enacted pursuant to the Indian Trader Statutes.

REVERSED.

FOOTNOTES

1 The parties stipulated that appellees' lands "either existed before the creation of the Reservation or were withdrawn from the reservation after its creation". Ashcroft, 513 F.Supp. at 598. This would appear to mean simply that the tracts are neither tribal nor trust property. There is no indication in the record that the tracts in question differ in any way from other non-Indian fee land within a reservation. See, e.g., United States v. Mazurie, 419 U.S. 544 (1975); Cardin v. De la Cruz, 671 F.2d 363 (9th Cir. 1982); Buster v. Wright, 135 F. 947 (8th Cir. 1905), appeal dismissed, 203 U.S. 599 (1906).

2 The district court found indicia of the regulations' scope in the regulations themselves. Title 25 C.F.R. § 252.11 provides:

> (a) The regulations in this Part do not preclude the Hopi, Navajo, or Zuni tribal councils from assessing and collecting such fees or taxes as they may deem appropriate from reservation businesses.
>
> (b) Nothing in the regulations of this Part may be construed to preclude tribal enforcement of these regulations or consistent tribal ordinances.

The district court found this to be evidence of the regulations' application solely to tribal or trust property. This premise is flatly contradicted in Montana v. United States, 450 U.S. 544, 565 (1981). Indian tribes retain inherent sovereign power to act in accordance with the authority recognized in this regulation with respect to all land within the exterior boundaries of the reservation whether it be fee patent, tribal or

trust property. Id. The district court also considered 25 C.F.R. § 252.22 indicia that non-Indian fee land was exempt from the regulations:

> No licensee may lease, sublet, rent or sell any building that the licensee occupies for any purpose to any person without the approval of the Commissioner and the consent of the tribe.

We disagree. In light of 25 U.S.C. § 262, requiring a would-be licensee to establish that he is a "proper person to engage in such trade", we find this regulation simply provides that the approval of the Commissioner and the tribe is necessary for a transfer of a licensed business to effect a transfer of the license.

A finding that fee land within reservation boundaries is in fact "on the reservation" is directly supported by the language of 25 C.F.R. § 251.11 which provides:

> The license period shall correspond to the period of the lease or permit held by the licensee on restricted Indian land except that where the proposed licensee is the owner ... [of] the land on which the business is to be conducted, the license period shall be fixed by the Commissioner ....

Part 251 applies to "[a]ny person other than an Indian of the full blood." 25 C.F.R. § 251.3. Thus, this regulation suggests the regulations' general application to non-Indian fee land within the reservation.

3 We attach no significance to the fact that only a small portion of appellees' sales are made to reservation Indians. The regulations expressly require the licensing of all "reservation businesses", businesses located within the reservation borders. 25 C.F.R. §§ 252.3(1), .5(a). This is within the Interior Department's statutory authority under §§ 261 and 262. See Central Machinery Co. v. Arizona State Tax Commission, 448 U.S. 160 (sale of eleven tractors falls within the Indian Trader Statutes); United States ex rel. Hornell v. One 1976 Chevrolet Station Wagon, 585 F.2d 978 (10th Cir. 1978) (sale of one automobile violated § 264 of the Trader Statutes).

APPENDIX B

OPINION AND ORDER OF THE DISTRICT COURT FOR THE DISTRICT OF ARIZONA

These consolidated actions for declaratory and injunctive relief were brought by Plaintiffs as owners or lessees of property owned in fee simple by non-Indians and surrounded by the Navajo Indian Reservation, against The United States, the Secretary of Interior and the Bureau of Indian Affairs (BIA) as a result of the BIA attempting to apply and enforce against the Plaintiffs, regulations concerning trade on the Navajo

Indian Reservation contained in 25 C.F.R. § 252, et seq.

The Defendants stipulated, pending entry of final judgment, to a restraining order halting further implementation of the regulations against plaintiffs.

Plaintiffs and defendants filed cross-motions for summary judgment, and joined in filing a Stipulated Statement of Fact (Appendix A to this Memorandum and Order), reserving the right to argue that one or more of the facts is not relevant or material to the issues before the Court.1

The Stipulation provides that plaintiff Atkinson's Ltd. of Arizona:

---

1 Defendants submitted a subsequent "Stipulated" Statement of Facts not signed on behalf of Plaintiffs, stating that Defendants had reconsidered the jointly signed Stipulation (Appendix A) and had "decided to agree to most, but not all", of the matters previously agreed to. Defendants have not moved for relief from the Stipulation they signed and accordingly, it is binding as to the facts stated therein.

> ... is the owner and operator of a motel, restaurant and gift and convenience store known as Cameron Trading Post which is located near Cameron, Arizona on one of the primary highways into the east end of the Grand Canyon area. This business is operated for and does almost all of its business with visitors to the Grand Canyon area and other travelers, who are traveling interstate, or who are using the facilities of interstate commerce. The minimum number of sales that are made to Indians from the surrounding Reservation lands are an insignificant part of Atkinson's business. Atkinson's operates Cameron Trading Post under a business privilege license issued by the State of Arizona and pays all applicable business privilege and use taxes to the State.

It was further stipulated:

> Various other Plaintiffs are similarly situated on primary highway passing through the Reservation and conduct a substantial proportion of their business with tourists, transients, and other non-residents of the Reservation, who are traveling interstate, or are using the facilities of interstate commerce.

The Regulations which the BIA seeks to apply against Plaintiffs were promulgated

August 29, 1975, (and have been amended on subsequent dates) pursuant to 25 U.S.C. § 261-264, the Indian Trader Statutes.

The first issue to be resolved is whether the Regulations properly construed, have an application to Plaintiffs' businesses conducted on fee owned land which is surrounded by the Navajo Indian Reservation. After consideration of the various regulations in Part 252 of Title 25, Code of Federal Regulations, captioned "BUSINESS PRACTICES ON THE NAVAJO, HOPI AND ZUNI RESERVATION", I am persuaded that such regulations have no application to Plaintiffs' businesses which are not conducted on the Reservation.

The stated purpose of the Regulations is

> ... to prescribe rules for the regulation of reservation businesses for the protection of Indian consumers on the Navajo, Hopi and Zuni Reservations as required by 25 U.S.C. 261, 262, 263 and 264. (§ 252.1).

and they are to apply to

> ... all persons who engage in retail business on the Navajo reservation .... (§ 252.2).

The definition of "Gross receipts" includes

> Receipts resulting from transactions concluded off the reservation that originate from the conduct and operation of the licensee's business on the reservation. (§ 252.3(f)(3)).

§ 252.3(l) defines a "Reservation business" as being

> a person that engaged at a fixed location or site within the exterior boundaries of the Navajo, Hopi or Zuni Reservations in the sale or purchase of goods or services ....

§ 252.4 provides that "Area Director", "Superintendent" or "Tribe" as used in the regulations have reference to those "who [have] jurisdiction over the land on which a person does business or intends to do business with Indians".

The fact that it is a business located <u>on</u> a reservation which is sought to be regulated is further apparent from § 252.5, when it speaks of licensing requirements, including:

> (5) Satisfactory evidence of the general fitness of the applicant

and employees of the applicant to live on the Indian reservation.

Regulation § 252.8 contemplates that all businesses will be conducted on leased tribal or trust lands:

> A license to operate a reservation business may not be issued unless the applicant has a right to use the land on which the business is to be conducted. The license period shall correspond to the period of the lease held by the licensee. The license period in no event may exceed twenty-five (25) years.

With respect to renewal of licenses, Regulation § 252.9(a) requires that:

> ... The Area Director shall report in writing to the Commissioner on the record the applicant has made as a reservation business owner and the applicant's present fitness to reside on the Indian reservation.

The fact that the business would be located on land subject to the sovereign rights of the tribe is reflected by the provisions of § 252.11:

> (a) The regulations in this Part do not preclude the Hopi, Navajo or Zuni tribal councils from assessing and collecting

such fees or taxes as they deem appropriate from reservation businesses.

(b) Nothing in the regulations of this Part may be construed to preclude tribal enforcement of these regulations or consistent tribal ordinances.

And finally, § 252.22, is further evidence that the land involved, and on which the reservation business is being conducted, is tribal or trust property:

No licensee may lease, sublet, rent, or sell any building that the licensee occupies for any purpose to any person without the approval of the Commissioner and the consent of the tribe.

When Part 252 of Title 25, C.F.R., is read as a whole, it is clear the purpose of the regulations is to control business activities occurring on the three named reservations, and that the regulations supplement and enhance Tribal sovereignty as to lands over which they have jurisdiction.

Defendants' position would restrict consideration to § 252.3(l) supra, and its

reference to a "fixed location or site within the exterior boundaries" of the reservation in determining the overall purposes of the regulations. This approach ignores the repeated statements in the cited regulations regarding acts on the reservation or on lands over which the tribe has jurisdiction. Statutes and regulations should be read and construed as a whole, and if possible, given a harmonious comprehensive meaning, Weinberger v. Hynson, Westcott and Dunning, Inc., 412 U.S. 609, 93 S.Ct. 2469, 37 L.Ed.2d 207 (1973), rather than piecemeal as done by Defendants.

It is reasonable to conclude that the regulations encompassed in Part 252 of Title 25 were responsive to the decision in Rockbridge v. Lincoln, 449 F.2d 567 (9th Cir. 1971), wherein members of the Navajo tribe filed a class action against the Secretary of Interior, the Commissioner of Indian Affairs, and the Area Director of the Navajo Indian Reservation, seeking an order:

> ... which would (1) require the appellees to adopt adequate rules and regulations which govern traders on the reservation for the protection of the Navajos, including specification of "the kind and quantity of goods and the prices at which such goods shall be sold", and (2) require appellees to enforce those regulations and the regulations which are now in effect.

449 F.2d at 569.

The Ninth Circuit found that the district court had jurisdiction over the controversy and could, after a hearing on the merits,

> ... enter such decrees as will protect the Navajo Indians in their relationship with the traders on the reservation within the guidelines that Congress has prescribed.

449 F.2d at 573. (Emphasis supplied).

The limitless authority over off-reservation businesses having limited relationships with individual Indian customers as proposed by defendants goes far beyond the holding in Rockbridge.

A determination that the regulations in 25 C.F.R., Part 252, are applicable to fee

owned lands which "either existed before the creation of the Reservation or were withdrawn from the Reservation after its creation" (Appendix A) would render the regulations contrary to the governing legislation under which they were adopted. 25 U.S.C. §§ 261, 262, 263 and 264.[2]

Title 25 U.S.C. § 261, enacted in 1876, provides power to "appoint traders to the Indian tribes" and for the Secretary of Interior "to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians".

---

2 There is no issue regarding Congress' power to regulate commerce with the Indian Tribes under Article 1, Section 8, Clause 3 of the United States Constitution. Rather, the question is whether Congress has acted so as to require businesses located off a reservation, but being surrounded by such reservation and selling to both non-Indians and Indians to obtain a traders license and subject themselves to tribal jurisdiction or be shut down, where the lands in question never had a trust status.

Section 262, enacted in 1901 for a particular tribe and reservation, was amended in 1903 to its present form:

> Any person desiring to trade with the Indians on any Indian reservation shall, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs [Secretary of the Interior], that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as to the Commissioner of Indian Affairs may prescribe for the protection of said Indians.

Section 262, enacted in 1834, authorizes the President to take action prohibiting trade "into the country belonging to any Indian Tribe" and accordingly, can provide no support for the regulations at issue.

Finally, § 264, which was enacted in 1834, and amended in 1882, reads as follows:

> Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a

> penalty of $500: Provided, That this section shall not apply to any person residing among or trading with the Choctaws, Cherokees, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes, residing in said Indian country, and belonging to the Union Agency therein: And provided further, That no white person shall be employed as a clerk by any Indian trader, except such as trade with said Five Civilized Tribes, unless first licensed so to do by the Commissioner of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior.

The four sections now appear as a part of Chapter 6 of Title 25, under the general heading "TRADERS WITH INDIANS".

Defendants urge that § 261, if properly construed, would authorize the adoption of rules regulating commerce with Indians, wherever it occurs, and without "territorial or geographical limitation". The Court is unwilling to adopt such a construction, in view of the specific grant of power to "appoint traders to the Indian tribes", in § 261, and the further provisions of § 262

regarding "trade with the Indians on any Indian Reservation". See Dick v. United States, 208 U.S. 340, 352, 28 S.Ct. 399, 402-03, 52 L.Ed. 520 (1908); Taylor v. United States, 44 F.2d 531 (9th Cir. 1930), cert. denied, 283 U.S. 820, 51 S.Ct. 345, 75 L.Ed. 1436 (1931).

Defendants attempt to incorporate the definition of "Indian Country" now appearing in the Federal Criminal Code, 18, U.S.C. § 1151, so as to broaden the scope of 25 U.S.C. § 264, in its reference to "Indian Country".[3] This position is untenable for several reasons. First, it ignores the

---

3 "Indian Country", as used in the criminal code, "means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the rights-of-way remaining through the same." 18 U.S.C. § 1151.

definition for "Indian Country" originally set out in § 264, and repealed by the Revised Statutes. That definition, which had nothing to do with fee lands as here involved, "is not to be regarded as if it had never been adopted". Ex Parte Crow Dog, 109 U.S. 556, 561, 3 S.Ct. 396, 399, 27 L.Ed. 1030 (1883). Further,

> ... It is an admitted rule in the interpretation of statutes that clauses which have been repealed may still be considered in construing the provisions that remain in force ....

Id.

The Federal Criminal Code, in defining "Indian Country", limits its use to Chapter 53 of Title 18, and the crimes and activities described in that chapter:

> Except as otherwise provided in sections 1154 and 1156 of this title, the term 'Indian Country', as used in this chapter, means (a) all land within the limits of any Indian reservation....

18 U.S.C. § 1151 (Emphasis supplied).

Accordingly, the Court finds that Title 18, and particularly the definition of "Indian Country" in § 1151, does not provide authority for the BIA to license Indian traders wherever located. Before such definition is incorporated into licensing authority in Title 25 there should be a clear expression of such intention by Congress - and there is no such intention, express or implied, in this instance.[4]

The Court therefore finds and concludes:

1. The businesses conducted by Plaintiffs as specified in the Stipulation of the parties are not reservation businesses within the declared purposes of Part 252, 25 C.F.R.

2. Plaintiffs' businesses are not located in "Indian "Country", within the meaning of Title 25, United States Code.

---

4 For a statute in which Congress has expressly adopted the § 1151 definition of 'Indian Country', see 25 U.S.C. § 1903(10) relating to Indian Child Welfare.

3. 25 C.F.R. § 252, et seq., do not apply to Plaintiffs.

The foregoing Opinion in its entirety constitutes the findings of fact and conclusions of law in this consolidated proceeding.

Therefore,

IT IS ORDERED that a Permanent Injunction shall issue in accordance with the foregoing Opinion.

Dated this 17th day of March, 1981.

/s/ Earl H. Carroll
UNITED STATES DISTRICT JUDGE

APPENDIX C

JUDGMENT OF THE DISTRICT COURT FOR THE DISTRICT OF ARIZONA

These consolidated proceedings came on to be heard on the cross motions of Plaintiffs and Defendants for summary judgment, and it appearing to the Court from the stipulations and pleadings that there is no issue of any

material fact and that plaintiffs are entitled to a judgment as a matter of law,

IT IS THEREFORE ORDERED that summary judgment be entered in favor of plaintiffs and against defendants;

IT IS FURTHER ORDERED, permanently enjoining and restraining the defendants and their agents, servants, employees and all persons in active concert and participation with them, from applying and enforcing Part 252 of the Regulations promulgated pursuant to Title 25, United States Code, against Plaintiffs at their place of business located on lands owned by non-Indians and not located on an Indian Reservation.

Dated this 17th day of March, 1981.

/s/ Earl H. Carroll

UNITED STATES DISTRICT JUDGE

APPENDIX D

ORDER OF THE NINTH CIRCUIT COURT OF APPEALS

Filed September 2, 1982

Before: SNEED, POOLE AND BOOCHEVER, Circuit Judges.

It is hereby ordered that the opinion in this case be amended as follows. At slip page 2519, second column, delete the first seven lines of the footnote material beginning with "We disagree.", and substitute:

> We disagree. We express no opinion as to the precise application of this regulation, which is not before us. However, we note that in light of 25 U.S.C. § 262, requiring a would-be licensee to establish that he is a "proper person to engage in such trade", this regulation is not necessarily inconsistent with the fee status of the land in question, but may simply provide that the approval of the Commissioner and the tribe is necessary for a transfer of a licensed business also to effect a transfer of the license.

The Clerk's Office is directed to notify West of the above change.

The petitions for rehearing are DENIED.

APPENDIX E

TRADERS WITH INDIANS

§ 261. Power to appoint traders with Indians

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians. Aug. 15, 1876, c. 289, § 5, 19 Stat. 200.

§ 262. Persons permitted to trade with Indians

Any person desiring to trade with the Indians on any Indian reservation shall, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians. Mar. 3, 1901, c. 832, § 1, 31 Stat. 1066; Mar. 3, 1903, c. 994, § 10, 32 Stat. 1009.

§ 263. Prohibition of trade by President

The President is authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, and to direct all licenses to trade with such tribe to be revoked, and all applications therefor to be rejected. No trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued. R.S. § 2132.

§ 264. Trading without license; white persons as clerks

Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $300: *Provided*, That this section shall not apply to any person residing among or trading with the Choctaws, Cherokees, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes, residing in said Indian country, and belonging to the Union Agency therein: *And provided further*, That no white person shall be employed as a clerk by any Indian trader, except such as trade with said Five Civilized Tribes, unless first licensed so to do by the Commissioner of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior. R.S. § 2133; July 31, 1882, c. 380, 22 Stat. 179.

SUBCHAPTER W—MISCELLANEOUS ACTIVITIES

PART 251—LICENSED INDIAN TRADERS

Sec.

251.1 Sole power to appoint.
251.2 Presidential prohibition.
251.3 Forfeiture of goods.
251.5 Government employees not to trade with Indians except in certain cases.
251.6 Small Purchases.
251.9 Application for license.
251.11 License period.
251.12 License renewal.
251.13 Power to close unlicensed stores.
251.14 Trade limited to specified premises.
251.15 License applicable for trading only by original licensee.
251.16 Trade in annuities or gratuities prohibited.
251.17 Tobacco sales to minors.
251.18 Intoxicating liquors.
251.19 Drugs.
251.21 Gambling.
251.22 Inspection of traders' prices.
251.23 Credit at trader's risk.
251.24 Cash payments only to Indians.
251.25 Trade in antiquities prohibited.
251.26 Infectious plants.

AUTHORITY: Sec. 5, 19 Stat. 200, sec. 1, 31 Stat. 1066, as amended; 25 U.S.C. 261, 262, unless otherwise noted.

SOURCE: 22 FR 10670, Dec. 24 1957, unless otherwise noted.

CROSS REFERENCE: For law and order regulations on Indian reservations, see Part 11 of this chapter. For regulations pertaining to traders on Navajo, Zuni, and Hopi reservations, see Part 252 of this chapter.

§ 251.1 Sole power to appoint.

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes. Any person desiring to trade with the Indians on any reservation may, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe.

§ 251.2 Presidential prohibition.

The President is authorized, whenever in his opinion the public interest may require, to prohibit the introduction of goods, or of any particular articles, into the country belonging to any Indian tribe, and to direct that all licenses to trade with such tribe be revoked, and all applications therefor rejected. No trader shall, so long as such prohibition exists, trade with any Indians of or for said tribe.

(R.S. 2132; 25 U.S.C. 263)

§ 251.3 Forfeiture of goods.

Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without a license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $500: *Provided*, That this section shall not apply to any person residing among or trading with the Choctaws, Cherokee, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes: *And provided further*, That no white person shall be employed as a clerk by any Indian trader, except as such trade with said Five Civilized Tribes, unless first authorized so to do by the Commissioner of Indian Affairs.

(R.S. 2133, as amended; 25 U.S.C. 264)

§ 251.5 Government employees not to trade with Indians except in certain cases.

Save as authorized by the act of June 19, 1939 [53 Stat. 840; 25 U.S.C. 68a, 87a, 441], no person employed in Indian affairs shall have any interest or concern in any trade with the Indians except for and on account of the United States; and any person offending herein shall be liable to a penalty of $5,000 and shall be removed from his office. Pending the promulgation of regulations prescribing in more detail the transactions authorized by the act of June 19, 1939, employees of the United States Government, including those in the Bureau of Indian Affairs, may be permitted to trade with Indians or Indian organizations under

the conditions specified in paragraph (a) of this section:

(a) Employees of the United States Government, including those in the Bureau of Indian Affairs may, with the approval of the Secretary of the Interior in each case where the amount involved exceeds $500, or with the approval of the superintendent or other officer in charge, where the amount involved does not exceed $500, be permitted to purchase from any Indian or Indian organization any arts and crafts or any other product, service or commodity produced, rendered, owned, controlled or furnished by any Indian or Indian organization: *Provided*, That no employee of the United States Government shall be permitted to make any such purchases for the purpose of engaging directly or indirectly in the commercial selling, reselling, trading, or bartering of said purchases by the said employee: *And provided further*, That employees in Alaska may in each case make such purchases with the approval of the Secretary of the Interior where the amount involved exceeds $750, and with the approval of the superintendent or other officer in charge where the amount involved does not exceed $750.

(b) *United States employees, Indian blood.* Indian employees of the United States Government, of whatever degree of Indian blood, may be members in the same manner as other Indian members of the tribe not so employed and receive benefits by reason of their membership in such tribes in corporation or cooperative associations, organized by and operated for Indians. Such Indian government employees may engage in all lawful transactions with Indians, Indian tribes and such corporations or cooperative associations. None of the transactions authorized herein may be entered into by such employees for the purpose of engaging directly or indirectly in the selling, releasing, trading, bartering or passing on in any other way for profit the objects, rights, services or property thus acquired. Nothing in this section shall prevent in proper cases the disposition of any such property when such transaction cannot be considered as actually engaging in any of the businesses prohibited in this section. All transactions authorized herein to be valid must be approved by the Secretary of the Interior.

(c) *Leases or sales of restricted Indian land.* Leases or sales of trust or restricted Indian land to or from Indian employees of the U.S. Government must be made on sealed bids unless the Commissioner of Indian Affairs waives this requirement on the basis of a full report showing (1) the need for the transaction, (2) the benefits accruing to both parties, and (3) that the consideration for the proposed transaction shall be not less than the appraised value of the land or leasehold interest unless the Indian employee qualifies and is intending a transaction in accordance with § 121.18 (b) and (c) of this chapter § 131.5(b) (1), (2), and (3) of this chapter. An affidavit as follows shall accompany each proposed land transaction:

I, (Name) (Title), swear (or affirm) that I have not exercised any undue influence nor used any special knowledge received by reason of my office in obtaining the (grantor's, purchaser's, vendor's) consent to the instant transaction.

(53 Stat. 840; 25 U.S.C. 68a, 87a, 441)

[22 FR 10670, Dec. 24, 1957, as amended at 37 FR 9628, May 13, 1972; 38 FR 25987, Sept. 17, 1973]

§ 251.6 Small purchases.

The purchase in small quantities for home use or consumption by Government employees or others, of blankets, baskets, etc., and articles of subsistence offered for sale by Indians, is held not to constitute trading with Indians within the meaning of section 2078 of the Revised Statutes.

(R.S. 2078; 25 U.S.C. 68)

§ 251.9 Application for license.

(a) Application for license must be made in writing on Form 5-052, setting forth the full name and residence of the applicant; if a firm, the firm name and the name of each member thereof; the place where it is proposed to carry on the trade; the capital to be invested; the names of the clerks to be employed; and the business experience of the applicant. The application must be

forwarded through the Superintendent to the Commissioner of Indian Affairs, accompanied by two satisfactory testimonials on Form 2-077 as to the character of the applicant and his employees and their fitness to be in the Indian country, and by an affidavit of the Superintendent on Form 5-053 that neither he nor any person for him has any interest, direct or indirect, present or prospective, in the proposed business or the profits arising therefrom, and that no arrangement for any benefit to himself or to any other person on his behalf is contemplated in case the license is granted. Licensed traders will be held responsible for the conduct of their employees.

(b) Itinerant peddlers or purveyors of foodstuffs and other merchandise shall be considered as traders and shall obtain a license or permit from the Superintendent setting forth the class of trade or peddling to be carried on, furnishing such character or credit references, or both, as may be required by the Superintendent. The period of the license for such itinerant peddlers shall be determined by the Superintendent.

(c) When a license or permit to trade is issued under the regulations in this Part 251, a fee of $5, payable when the license is issued, shall be levied against the licensee.

[30 FR 8267, June 29, 1965]

§ 251.11 License period.

Licenses to trade shall not be issued unless the proposed licensee has a right to the use of the land on which the business is to be conducted. The license period shall correspond to the period of the lease or permit held by the licensee on restricted Indian land, except that where the proposed licensee is the owner or beneficial owner or holds a use right to the land on which the business is to be conducted, the license period shall be fixed by the Commissioner of Indian Affairs or his authorized representative, but in no case shall the license period exceed 25 years.

[30 FR 8268, June 29, 1965]

§ 251.12 License renewal.

Application for renewal of license must be made to the Commissioner of Indian Affairs on Form 5-054, through the superintendent, at least 30 days prior to the expiration of the existing license, and the superintendent must report as to the record the applicant has made as a trader and his fitness to continue as such under a new license.

§ 251.13 Power to close unlicensed stores.

If persons carry on trade within a reservation with the Indians without a license, or continue to trade after expiration of the license without applying for renewal, the superintendent will immediately report the facts in the case to the Commissioner of Indian Affairs, who may, if necessary, direct the superintendent to close the stores of such traders.

§ 251.14 Trade limited to specified premises.

No trade with Indians is permitted at any other place than that specified in the license. Licenses to not cover branch stores. A separate license and bond must be furnished for each such store. The business of a licensed trader must be managed by the bonded principal, who must habitually reside upon the reservation, and not by an unbonded subordinate.

§ 251.15 License applicable for trading only by original licensee.

No trader will be allowed to lease, sublet, rent, or sell any of the buildings which he occupies, for any purpose to any other person or concern, without the approval of the Commissioner of Indian Affairs. A license to trade with Indians does not confer upon the trader any right or privileges in respect to the herding or raising of livestock upon the reservation. The use of reservation lands, whether tribal or allotted, for such purposes can be obtained by a trader only upon the terms and under the restrictions which apply to other persons. His license gives him no advantage over others in this respect.

§ 251.16 Trade in annuities or gratuities prohibited.

Traders are forbidden to buy, trade for, or have in their possession any annuity or other goods of any description which have been purchased or furnished by the Government for the use or welfare of the Indians. Livestock or their increase purchased by the Government and in possession or control of the Indians may not be purchased by any trader, not a member of the tribe to which the owners or possessors of the cattle belong, except with the written consent of the agent of said tribe.

§ 251.17 Tobacco sales to minors.

No trader shall sell tobacco, cigars, or cigarettes to any Indian under 18 years of age.

§ 251.18 Intoxicating liquors.

No trader shall use or permit to be used his premises for any unlawful conduct or purpose whatsoever. No trader shall use of permit to be used any part of his premises for the manufacture, sale, gift, transportation, drinking or storage of intoxicating liquors or beverages in violation of existing laws relating thereto. Violation of this section will subject the trader to criminal prosecution, revocation of license and such other action as may be necessary.

§ 251.19 Drugs.

Traders shall not keep for sale, or sell, give away, or use any opium, chloral, cocaine, peyote or mescal bean, hashish or Indian hemp or marihuana, or any compound containing either ingredient, and for violation hereof the trader's license shall be revoked.

§ 251.21 Gambling.

Gambling, by dice, cards, or in any way whatever, is strictly prohibited in any licensed trader's store or on the premises.

§ 251.22 Inspection of traders' prices.

It is the duty of the superintendent to see that the prices charged by licensed traders are fair and reasonable. To this end the traders shall on request submit to the superintendent or inspecting officials the original invoice, showing cost, together with a statement of transportation charges, retail price of articles sold by them, the amount of Indian accounts carried on their books, the total annual sales, the value of buildings, livestock owned on reservation, the number of employees, and any other business information such officials may desire. The quality of all articles kept on sale must be good and merchantable.

§ 251.23 Credit at trader's risk.

Credit given Indians will be at the trader's own risk, as no assistance will be given by Government officials in the collection of debts against Indians. Traders shall not accept pawns or pledges of personal property by Indians to obtain credit or loans.

§ 251.24 Cash payments only to Indians.

Traders must not pay Indians in tokens, tickets, store orders, or anything else of that character. Payment must be made in money, or in credit if the Indian is indebted to the trader.

§ 251.25 Trade in antiquities prohibited.

Traders shall not deal in objects of antiquity removed from any historic or prehistoric ruin or monument on land owned or controlled by the United States.

CROSS REFERENCE: For additional regulations pertaining to preservation of antiquities, see Part 132 of this chapter. For regulations of the Bureau of Land Management regarding antiquities, see 43 CFR Part 3.

§ 251.26 Infectious plants.

Traders shall not introduce into, sell, or spread within Indian reservations any plant, plant product, seed, or any type of vegetation, which is infested, or infected or which might act as a carrier of any pests of infectious, transmissible, or contagious diseases, as determined by the laws and regulations of the State for plant quarantine and pest control. For the purpose of enforcement of this provision State officers may enter Indian reservations, with the consent of the superintendent, to inspect the premises of such

traders and otherwise to execute such State laws and regulations.

PART 252—BUSINESS PRACTICES ON THE NAVAJO, HOPI AND ZUNI RESERVATIONS

Subpart A—Interpretation and Construction Guides

Sec.
252.1 Purpose.
252.2 Scope.
252.3 Definitions.
252.4 Interpretation and construction.

Subpart B—Licensing Requirements and Procedures

252.5 Reservation business license required.
252.6 Approval or denial of license application.
252.7 Bond requirement for a reservation business.
252.8 License period for reservation businesses.
252.9 Application for license renewal.
252.10 License fees for reservation businesses.
252.11 Tribal fees, taxes, and enforcement.
252.12 Peddler's permits.
252.13 Amusement company licenses.
252.14 Trade in livestock restricted.
252.15 Consent to jurisdiction of Hopi and Zuni tribal courts.

Subpart C—General Business Practices

252.16 Price marking.
252.17 Health and sanitation requirements.
252.18 Availability of employee authorized to transact business.
252.19 Check cashing.
252.20 Payment for purchase of Indian goods or services.
252.21 Trade confined to premises.
252.22 Subleasing prohibited.
252.23 Posted statement of ownership.
252.24 Attendance at semi-annual meetings.
252.25 Withholding of mail prohibited.
252.26 Trade in antiquities prohibited.
252.27 Trade in imitation Indian crafts prohibited.
252.28 Gambling prohibited.
252.29 Political contributions restricted.
252.30 Retaliation prohibited.
252.31 Trade by Indian Affairs employees restricted.

Subpart D—Pawnbroker Practices

252.32 Reservation pawnbroker license required.
252.33 Fees for pawnbroker license.
252.34 Pawnbroker records.
252.35 Pawnbroker disclosure requirements.
252.36 Maximum finance charges on pawn transactions.
252.37 Prepayment.
252.38 Pawn loans; period, notice and sale.
252.39 Sale and redemption of pawn.
252.40 Proceeds of sale.
252.41 Refinancing transaction.
252.42 Lost pawn receipts or tickets.
252.43 Outstanding obligations owed to pledgee.
252.44 Insurance on pawn.

Subpart E—Consumer Credit Transactions Other Than Pawn

252.45 Consumer credit applications.
252.46 Credit disclosure statements.
252.47 Monthly billing statement.
252.48 Translation of disclosure statements.
252.49 Usury prohibited.

Subpart F—Enforcement Powers, Procedures and Remedies

252.50 Penalty and forfeiture of merchandise.
252.51 Authority to close unlicensed reservation businesses.
252.52 Revocation of license and lease and recovery on bond.
252.53 Cease and desist orders.
252.54 Periodic review of performance.
252.55 Price monitoring and control.
252.56 Show cause procedures.
252.57 Procedures to cancel liability on bond.
252.58 Records, reports and obligations of reservation business owners.
252.59 Customer complaint procedures.

AUTHORITY: 5 U.S.C. 301, secs. 463, 465 revised statutes (25 U.S.C. 2 and 9) 230 DM 2.

SOURCE: 40 FR 39835, Aug. 29, 1975, unless otherwise noted.

Subpart A—Interpretation and Construction Guides

§ 252.1 Purpose.

The purpose of the regulations of this Part is to prescribe rules for the regulation of reservation businesses for the protection of Indian consumers on the Navajo, Hopi and Zuni Reservations as required by 25 U.S.C. 261, 262, 263, and 264.

§ 252.2 Scope.

The regulations of this part apply to all non-members of the Navajo, Hopi and Zuni Tribes, who engage in retail businesses on the above respective reservations. These regulations do not apply to businesses that are wholly owned and operated by either the Navajo, Hopi or Zuni Tribes, or by individual tribal members within their respective reservations.

[45 FR 64906, Oct. 1, 1980]

§ 252.3 Definitions.

For the purposes of this Part—

(a) "Annual percentage rate" means the annual percentage rate of finance charge determined in accordance with 12 CFR 226.5, which defines annual percentage rates.

(b) "Consumer credit transaction" means a grant of credit or a loan that is made by a person regularly engaged in the business of making loans or granting credit primarily for a personal, family, household, or agricultural purpose.

(c) "Draft" means a writing that is a direction to pay that:

(1) Identifies the person to pay with reasonable certainty;

(2) Is signed by the drawer;

(3) Contains an unconditional order to pay a sum certain in money and no other promise, order, obligation or power given by the drawer;

(4) Is payable on demand or at a definite time; and

(5) Is payable to order.

(d) "Finance charge" means the cost of credit determined in accordance with 12 CFR 226.4, which defines "finance charge".

(e) "Firm" means a corporation or a partnership.

(f) "Gross receipts" include the following:

(1) All cash received from the conduct and operation of the licensee's business at the premises described in the application for license.

(2) Receipts from both wholesale and retail transactions.

(3) Receipts resulting from transactions concluded off the reservation that originate from the conduct and operation of the licensee's business on the reservation.

(4) The market value of all property taken in trade on the date when received and either held by the licensee for purposes other than resale or credited on any account in payment for merchandise.

(5) Proceeds from the sale of any goods bought from Indians regardless of where the sale takes place.

(6) Finance charge received on loans, but not the return of principal.

(g) "Open end credit" means consumer credit transactions made on an account by a plan under which (1) the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide; (2) the customer has the privilege of paying the balance in full or in installments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance.

(h) "Pawnbroker" means a person whose business includes lending money secured by personal property deposited with the lender.

(i) "Peddler" means a person who offers goods for sale within the exterior boundaries of the Hopi, Navajo or Zuni Reservations, but does not do business from a fixed location or site on any of those reservations.

(j) "Person" includes a natural person, a corporation, trust, estate, partnership, cooperative or association.

(k) "Replacement value" means the present cost to the owner of replacing an item with one having the same quality and usefulness.

(l) "Reservation business" means a person that engages at a fixed location or site within the exterior boundaries of the Navajo, Hopi or Zuni Reservations in the sale or purchase of goods or services or in consumer credit transactions with Indians and is not a bank, saving bank, trust company, savings or building and loan association or credit union operating under the laws of the United States or the laws of New Mexico, Arizona or Utah, a business on the Hopi Reservation that is wholly owned and operated by members of the Hopi Tribe, or a business on the Zuni Reservation that is wholly owned

and operated by members of the Zuni Tribe.

§ 252.4 Interpretation and construction.

(a) "Area Director" refers to the Area Director of the Bureau of Indian Affairs or the Administrator of the Joint Use Area of the Bureau of Indian Affairs who has jurisdiction over the land on which a person does business or intends to do business with Indians.

(b) "Commissioner" refers to the Commissioner of Indian Affairs or a person to whom the Commissioner of Indian Affairs has delegated authority under this Part or under 25 U.S.C. 261, 262, 263, or 264.

(c) "Superintendent" refers to the Superintendent of the Bureau of Indian Affairs who has jurisdiction over the land on which a person does business or intends to do business with Indians.

(d) "Tribe" refers to the tribe that has jurisdiction over the land on which a person does business or intends to do business with Indians.

Subpart B—Licensing Requirements and Procedures

§ 252.5 Reservation business license required.

(a) No person may own or lease a reservation business without a license issued under the provisions of this subpart.

(b) The applicant shall apply in writing on a form provided by the Commissioner setting forth the following:

(1) The full name and residence of the applicant.

(2) Three (3) responsible references.

(3) The firm name and the name of each member of the board of directors if the applicant is a firm.

(4) Satisfactory evidence as to the character, experience and business ability of the applicant and the employees of the applicant.

(5) Satisfactory evidence of the general fitness of the applicant and employees of the applicant to reside on the Indian reservation.

(c) Upon the request of the Commissioner, the applicant shall furnish the following:

(1) The capital invested or to be invested and, of this, the amount of capital owned and the amount borrowed or to be borrowed.

(2) The name of the lender of any borrowed capital, the date due, the rate of interest to be paid, and the names of any endorsers and security.

(3) A copy of any contract or trade agreement whether oral or written with creditors or financing individuals or institutions, including any stipulations whereby financing fees are to be paid.

(d) Information that if released might adversely affect the competitive position of the applicant shall remain confidential.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976]

§ 252.6 Approval or denial of license application.

(a) The Commissioner shall approve or deny each license application and notify the applicant no later than thirty (30) days after receipt of a completed application.

(b) No application is complete until any clearance or tribal council approval required by tribal or Federal regulations has been obtained.

(c) The Commissioner may not deny a license to an applicant for the purpose of limiting competition.

(d) If the application is approved the license shall be issued on a form provided by the Commissioner.

(e) If the Commissioner denies the license application the applicant may appeal under the provisions of Part 2 of this Title no later than thirty (30) days after the date on which notice of denial of the application was sent.

§ 252.7 Bond requirement for a reservation business.

(a) An applicant for a license or renewal of a license to operate a reservation business shall at the time the application is submitted furnish a bond on a form provided by the Commissioner in the name of the applicant in the amount of ten thousand dollars ($10,000) or such larger sum as the Commissioner may designate, with two (2) or more sureties approved by the Commissioner or with a guaranty com-

pany qualified under the Act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6-13). The bond shall be for the same period covered by the license. No licensee may trade without a bond. Except as provided in paragraph (d) of this section, no surety may be released from liability until the license expires.

(b) The bond shall be in favor of the United States for the benefit of the United States and any customer of the licensee who recovers a judgment for damages resulting from violation of any law or regulation affecting or relating to reservation businesses. Any customer who recovers such a judgment may bring suit on the bond in his or her own name. The bond shall be conditioned on payment by the licensee of all judgments for damages resulting from violations of the regulations of this Part.

(c) Any surety for a reservation business on the Hopi or Zuni Reservation shall agree in writing to submit itself voluntarily to the jurisdiction of the tribal court for the purpose of adjudicating any claim arising under the bond.

(d) Any surety on the bond of a licensed reservation business may be relieved from liabilities by complying with the provisions of § 252.57 of this title.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 22937, June 8, 1976]

§ 252.8 License period for reservation businesses.

A license to operate a reservation business may not be issued unless the applicant has a right to use the land on which the business is to be conducted. The license period shall correspond to the period of the lease held by the licensee. The license period in no event may exceed twenty-five (25) years.

§ 252.9 Application for license renewal.

(a) An applicant for renewal of the license to trade shall file an application on a form provided by the Commissioner with the Area Director not less than three (3) months prior to the expiration of the existing license. The Area Director shall report in writing to the Commissioner on the record the applicant has made as a reservation business owner and the applicant's present fitness to reside on the Indian reservation.

(b) The Commissioner may issue a temporary permit for three (3) months pending consideration of application for license renewal.

(c) Prior to expiration of the existing license or, if issued, the temporary permit, the Commissioner shall approve or deny the application for license renewal and notify the applicant.

(d) No license may be renewed until any clearance or tribal council approval required by tribal or other federal regulations has been obtained.

(e) If the Commissioner denies the application for renewal, the applicant may appeal under the provisions of Part 2 of this title.

§ 252.10 License fees for reservation businesses.

(a) Prior to the issuance of an initial license, each licensee who is not a member of the Navajo tribe shall pay the following amount:

(1) If the license is issued before July 1, the licensee shall pay fifty dollars ($50).

(2) If the license is issued on or after July 1, the licensee shall pay twenty-five dollars ($25).

(b) Each licensed business owner who is not a member of the Navajo tribe shall pay on or before January 10 of each year an annual license fee determined as follows based on the licensee's most recent annual report:

(1) If the licensee's gross receipts are less than one hundred thousand dollars ($100,000) for the year or the licensee has not yet been required to file its first annual report, the license fee is fifty dollars ($50).

(2) If the licensee's gross receipts for the year are at least one hundred thousand dollars ($100,000) but not more than four hundred and ninety-nine thousand nine hundred and ninety-nine dollars ($499,999) the fee is one hundred dollars ($100).

(3) If the licensee's gross receipts for the year are at least five hundred thousand dollars ($500,000) but not more than seven hundred and forty-nine thousand nine hundred and

ninety-nine dollars ($749,999), the fee is two hundred dollars ($200).

(4) If the licensee's gross receipts for the year are seven hundred fifty thousand dollars ($750,000) or more, the fee is three hundred dollars ($300).

(c) The Navajo Area Director shall determine the annual license fee payable by licensees who are enrolled members of the Navajo Tribe. The license fee for an enrolled member of the Navajo Tribe may not be less than twenty percent (20%) nor greater than one hundred percent (100 percent) of the amount the licensee would be required to pay if the licensee were not a tribal member.

(d) All fees are payable to the Area Director and shall be deposited to the credit of a subaccount of the account "Indian Monies, Proceeds of Labor" and shall be expended in the enforcement of the regulations of the Part.

§ 252.11 Tribal fees, taxes, and enforcement.

(a) The regulations in this Part do not preclude the Hopi, Navajo, or Zuni tribal councils from assessing and collecting such fees or taxes as they may deem appropriate from reservation businesses.

(b) Nothing in the regulations of this Part may be construed to preclude tribal enforcement of these regulations or consistent tribal ordinances.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976]

§ 252.12 Peddler's permits.

(a) Except as provided in paragraph (b) of this section, no peddler may offer goods for sale within the exterior boundaries of the Hopi, Navajo, or Zuni reservations without a peddler's permit. The permit shall state on its face the class of goods that may be offered for sale. No peddler may offer for sale any class of goods other than those listed on the face of the permit.

(b) No peddler who is an enrolled member of a federally recognized Indian tribe is required to obtain a peddler's permit for offering to sell the following items:

(1) Coal and wood for non-commercial use,

(2) Homegrown fresh products,

(3) Meat products raised locally by the peddler, or

(4) Arts and crafts made by the peddler or the peddler's family.

(c) The applicant shall apply for a permit in writing on a form provided by the Commissioner.

(d) Peddlers shall pay such fee and post such surety bond on a form provided by the Commissioner as the Commissioner requires. The surety bond required may not be less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000).

(e) Any surety on the bond of a peddler may be relieved of liability by complying with the provisions of § 252.57.

(25 U.S.C. 261 et seq.)

[43 FR 27826, June 27, 1978]

§ 252.13 Amusement company licenses.

(a) No person may operate a portable dance pavilion, mechanical amusement device such as a ferris wheel or carousel, or commercial games of skill within the exterior boundaries of the Navajo, Hopi, or Zuni Reservations without a license from the Commissioner.

(b) The licensee shall pay such fee as the Commissioner requires. The fee shall be not less than five dollars ($5) nor more than twenty-five dollars ($25) per unit.

(c) The licensee shall post a surety bond on a form provided by the Commissioner in an amount not exceeding ten thousand dollars ($10,000) and a personal injury and property damage liability bond of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000) as may be required by the Commissioner.

(d) The provisions of this section do not apply to amusement companies where the contract between the tribe and the amusement company provides for the payment of a fee to the tribe and for the protection of the public against personal injury and property damage by bond in the amounts specified in paragraph (c) of this section.

(e) Any surety on a bond under this section may be relieved of liability by complying with the provisions of § 252.57.

§ 252.14 Trade in livestock restricted.

(a) No person other than an enrolled member of the tribe or any association, partnership, corporation or business entity wholly owned by enrolled members of the tribe may purchase livestock from tribal members without a special permit issued by the Commissioner.

(b) The Commissioner shall issue a permit to each applicant who establishes to the Commissioner's satisfaction that the applicant is a fit person to engage in the purchase of livestock and who posts a bond on a form provided by the Commissioner in the amount of ten thousand dollars ($10,000). This paragraph does not require a person who has posted a bond of ten thousand dollars ($10,000) or more under other provisions of this Part to post an additional bond to obtain a permit under this section.

(c) Any surety on a bond under this section may be relieved of liability by complying with the provisions of § 252.57.

(d) The provisions of this section do not apply to purchases of livestock made at an organized public auction.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 22937, June 8, 1976]

§ 252.15 Consent to jurisdiction of Hopi and Zuni tribal courts.

As a condition to doing business on the Hopi or the Zuni Reservation each applicant for license under this Part shall, in accordance with the constitutions of those tribes, voluntarily submit the applicant and the applicant's employees or agents to the jurisdiction of the tribal court for the purpose of the adjudication of any dispute, claim or obligation arising under tribal ordinance relating to commerce carried out by the licensee.

Subpart C—General Business Practices

§ 252.16 Price marking.

The price of each article offered for sale shall be marked on the article, its containers or in any other manner that is plain and visible to the customer and that affords the customer a reasonable opportunity to learn the price of the article prior to purchase.

§ 252.17 Health and sanitation requirements.

(a) Each licensee shall keep both the premises and the place of business in a clean and sanitary condition at all times and shall avoid exposure of foodstuffs to contamination. No licensee may offer for sale any goods that are banned for health or sanitation reasons from retail sale by any Federal agency or by the tribe or, where not in conflict with the tribal regulations, by the State or by any State agency. No licensee may knowingly offer for sale any food that is contaminated.

(b) All weights and measure shall conform to standards set by the National Bureau of Standards and to standards, if any, set by the tribe and, if not in conflict with tribal regulations, to the standards set by the State.

(c) If training in foodhandling is available from the Indian Health Service, each person working in a reservation business shall complete the foodhandler training offered by the Indian Health Service before handling any food sold by a reservation business.

(d) Any person whom the Service Unit Director of the Indian Health Service determines is infected with or is a carrier of any communicable disease in a stage likely to be communicable to persons exposed as a result of the infected employee's normal duties as a foodhandler may not be employed by a reservation business.

(e) Each business shall comply with all Federal health regulations and with all tribal health regulations that are consistent with Federal regulations. Each business shall comply with State health regulations that are consistent with tribal and Federal health regulations.

(f) Except as otherwise provided herein, nothing in this section may be construed as a grant of enforcement powers to any agency of a State or its subdivisions.

(g) It is the duty of the health officers of the Indian Health Service to make periodic inspections, recommend

improvements, and report thereon to the Commissioner.

§ 252.18 Availability of employee authorized to transact business.

Each licensee shall provide during normal business hours an employee authorized in writing to engage in all business transactions that the licensee normally offers to customers.

§ 252.19 Check cashing.

(a) A reservation business may give a fully negotiable check in addition to United States currency when cashing a draft, check or money order. A reservation business may not give scrip, credit or other substitute for United States currency when cashing a draft, check or money order.

(b) A reservation business owner or employee may advise a customer cashing checks, money orders or drafts of the amount due on the customer's credit accounts, pawn accounts or any other obligation the customer owes to the business, but in no event may the owner or employee withhold the proceeds of the check, money order or draft from the customer on the basis of existing credit obligations.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3258, Jan. 22, 1976]

§ 252.20 Payment for purchase of Indian goods or services.

(a) A reservation business shall pay for the purchase of Indian goods or services with cash or a fully negotiable check. A reservation business may not pay for Indian goods or services with trade slips or future credit. In any transaction involving the purchase of Indian goods on the Navajo Reservation, the reservation business shall furnish a bill of sale indicating the name of the seller, a description of the goods, the amount paid for the goods, the date of sale, and the signature of both parties and shall retain a copy of the bill of sales in its business records.

(b) A reservation business owner or employee may advise a customer selling Indian goods or services of the amount due on the customer's credit accounts, pawn accounts or any other obligation the customer owes to the business, but in no event may the owner or employee withhold the proceeds of the sale from the customer on the basis of existing credit obligations.

§ 252.21 Trade confined to premises.

The licensee shall confine all trade on the reservation to the premises specified in the license, except, where permitted under § 252.14, the buying and selling of livestock and livestock products.

§ 252.22 Subleasing prohibited.

No licensee may lease, sublet, rent, or sell any building that the licensee occupies for any purpose to any person without the approval of the Commissioner and the consent of the tribe.

§ 252.23 Posted statement of ownership.

The licensee of a reservation business shall display in a prominent place a notice that is legible to customers stating the form of the business entity, the names and addresses of all other reservation businesses owned in whole or in part by the business entity, and if the licensee is not a corporation, the names and addresses of the owner or owners of the business. If the licensee is a corporation the notice shall list the names and addresses of the members of the Board of Directors.

§ 252.24 Attendance at semi-annual meetings.

Upon the request of a tribal official designated by the governing body, each licensee shall attend a semi-annual public meeting of a tribal governing body to respond to customer inquiries.

§ 252.25 Withholding of mail prohibited.

No owner or employee of a reservation business may open, withhold, or otherwise delay the delivery of mail.

§ 252.26 Trade in antiquities prohibited.

No licensee may knowingly buy, sell, rent or lease any artifact created before 1930 that was removed from an historic ruin or monument.

§ 252.27 Trade in imitation Indian crafts prohibited.

No person may introduce or possess for disposition or sale within the exterior boundaries of the Hopi, Navajo or Zuni Reservations any object that is represented to be an Indian handicraft unless the object was produced by an Indian or Indians with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual's product.

§ 252.28 Gambling prohibited.

No licensee may permit any person to gamble by dice, cards, or in any way whatever, including the use of any mechanical device, on the premises of any licensed business.

§ 252.29 Political contributions restricted.

No reservation business owner who is ineligible to vote in a Navajo tribal election may grant or donate any money or goods to any candidate for election to Navajo tribal office.

§ 252.30 Retaliation prohibited.

No licensee may refuse service to any customer for the purpose of retaliating against that customer for enforcing or attempting to enforce the regulations of this Part.

§ 252.31 Trade by Indian Affairs employees restricted.

(a) Except as authorized in this section, no person employed by the U.S. Government in Indian Affairs may have any interest in any trade with an Indian or an Indian organization. Employees of the U.S. Government may trade with an Indian or Indian organization for any purpose other than to engage in a profit-making activity under the following conditions:

(1) Where the amount involved is $500 or less a U.S. Government employee may purchase goods or services from an Indian or Indian organization.

(2) Where the amount involved is greater than $500 a U.S. Government employee may, with the approval of the Secretary of the Interior, purchase goods or services from any Indian or Indian organization.

(b) Lease or sale of home sites or allotments on trust or restricted Indian land to or from Indian employees of the U.S. Government shall be made on sealed bids, unless the Commissioner waives this requirement on the basis of a report showing (1) the need for the transaction, (2) the benefits accruing to both parties, and (3) that the consideration for the proposed transaction is not less than the appraised value of the land or leasehold interest unless the Indian employee qualifies and is intending a transaction in accordance with § 121.5 (b) and (c) of this Chapter of § 131.5(b)(1), (2) and (3) of this Chapter. An affidavit, as follows, shall accompany each proposed land transaction:

I, _____
(Name)

_____,
(Title)

swear (or affirm) that I have not exercised any undue influence nor used any special knowledge received by reason of my office in obtaining the (grantor's, purchaser's, vendor's) consent to the instant transaction.

(c) This section does not prohibit any reservation business from contracting with the Federal Government to provide postal services to Indian communities in which Government postal service is unavailable.

(d) Nothing in this section prohibits an Indian employee from receiving benefits by reason of membership in a tribe or corporation or cooperative association organized by and operated for Indians.

(e) U.S. Government employees who violate this section are liable to a penalty of five thousand dollars ($5,000) and shall be removed from office, see 25 U.S.C. 68.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976]

Subpart D—Pawnbroker Practices

§ 252.32 Reservation pawnbroker license required.

(a) No person may accept pawns or pledges of personal property as security for monies or accounts due by an Indian within the exterior boundaries of the Navajo, Hopi or Zuni Reserva-

tions unless such person is an agent of a bank, saving bank, trust company, savings or building and loan association, or credit union operating under the laws of the United States or the laws of New Mexico, Arizona, or Utah or unless such person—

(1) Holds a valid license to operate a reservation business,

(2) Holds a valid reservation pawnbroker license, and

(3) Posts a bond on a form provided by the commissioner in the name of the licensee in the amount of twenty-five thousand dollars ($25,000) or such larger sum as may be designated by the Commissioner with two (2) or more sureties approved by the Commissioner or with a guaranty company qualified under the Act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6-13).

(b) An applicant for a reservation pawnbroker license shall apply in writing on a form provided by the Commissioner.

(c) The bond required by paragraph (a) of this section shall be in favor of the United States for the benefits of the customers of the licensee and shall specifically indemnify all customers who have recovered judgment against the licensee for destroyed, lost, misplaced or misappropriated pawn or other property. Any customer recovering such a judgment may bring suit on the bond in his or her own name. The bond shall be for the same period as the license.

(d) Any surety on a bond under this section may be relieved of liability by complying with the provisions of § 252.57.

(e) No person may accept pawns or pledges of personal property as security for monies or accounts due by an Indian after the effective date of a tribal ordinance banning the acceptance of pawn on the reservation.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976; 41 FR 22937, June 8, 1976]

§ 252.33 Fees for pawnbroker license.

(a) Prior to the issuance of an initial pawnbroker license, each licensee who is not a member of the Navajo Tribe shall pay the following amount:

(1) If the license is issued before July 1, the licensee shall pay two hundred dollars ($200).

(2) If the license is issued on or after July 1, the licensee shall pay one hundred dollars ($100).

(b) Each licensed pawnbroker who is not a member of the Navajo Tribe shall pay on or before January 10 of each year an annual license fee of two hundred dollars ($200).

(c) The Area Director shall determine the annual license fee payable by licensees who are enrolled members of the Navajo Tribe. The license fee for a member of the Navajo Tribe may not be less than twenty percent (20 percent) nor greater than one hundred percent (100 percent) of the amount the licensee would be required to pay if the licensee were not tribal member.

(d) All fees are payable to the Area Director and shall be deposited to the credit of a subaccount of the account "Indian Monies, Proceeds of Labor" and shall be expended exclusively for the enforcement of the regulations of this Part.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976]

§ 252.34 Pawnbroker records.

Each pawnbroker shall keep a written record of the following information:

(a) Transaction number.

(b) Name of pledgor.

(c) Address of pledgor.

(d) Census number or social security number of pledgor.

(e) Date of transaction.

(f) Replacement value of pawn.

(g) Description of pawned item.

(h) Amount loaned in cash.

(i) Amount loaned as credit.

(j) Finance charge.

(k) Amount financed.

(l) Date and amount of payments made by pledgor.

(m) Date notice of default sent to pledgor.

(n) Date pawned item sold.

(o) Name and address of purchaser.

(p) Amount received upon sale.

(q) Amount of any surplus returned to the pledgor.

(r) Such other information as the Commissioner may require.

§ 252.35 Pawnbroker disclosure requirements.

In all transactions in which pawn is taken the lender shall give the borrower a written ticket or receipt disclosing the following information to the extent applicable:

(a) Clear identification of the property pledged.

(b) The date of the transaction.

(c) Amount of the loan.

(d) Name and social security or census number of the pledgor.

(e) Replacement value of the pawn as agreed upon by the pledgor and pledgee.

(f) Date on which loan is due.

(g) The amount, expressed as a dollar amount, of any finance charges.

(h) The finance charges expressed as an annual percentage rate and computed in accordance with the provisions of 12 CFR 226.5(b).

(i) The amount, or method of computing the amount, of any charges to be assessed after the date the loan is due.

(j) A statement of the conditions of default and the pledgor's rights upon default, as defined by this Part.

(k) Identification of the method of computing any unearned portion of the finance charges in the event of prepayment of the obligation.

§ 252.36 Maximum finance charges on pawn transactions.

No pawnbroker may impose an annual finance charge greater than twenty-four percent (24 percent) of the unpaid balance for the period of the loan nor assess late charges or delinquency charges on any loan.

§ 252.37 Prepayment.

(a) Subject to the provisions of paragraph (b) of this section, the pledgor may prepay in full or in any part the unpaid balance of a loan at any time without penalty.

(b) When a loan is prepaid the lender may collect the earned portion of the finance charge or may charge an administrative fee not to exceed ten percent (10 percent) of the unearned finance charge or two dollars ($2) whichever is greater.

§ 252.38 Pawn loans, period, notice and sale.

(a) The proceeds of all loans secured by pawn and for which a finance charge is imposed shall be paid only in cash or with a fully negotiable check.

(b) The period of all such loans shall be no less than twelve (12) months, subject to the provisions of paragraph (c).

(c) Thirty (30) days prior to the end of the loan period the pledgee may make a declaration of intention to proceed with sale of the pawned item by sending notice of intent to the pledgor.

(d) the notice required in paragraph (c) of this section shall be sent to the pledgor and proof of delivery obtained and shall contain a description of the item pawned, a statement of the principal and finance charge owed, a statement of the intention to sell, the date of the sale, and the procedure for redemption.

(e) Nothing in this section requires the business owner to proceed with notice and sale if the business owner desires to hold the pawn for a period longer than the loan period stated in the original agreement.

(f) Unless notice is given under paragraph (c) of this section, or the loan is refinanced under the provisions of § 252.41, no finance charge may be imposed for the time the loan remains unpaid after the end of the loan period stated on the pawn ticket.

§ 252.39 Sale and redemption of pawn.

(a) If the retention period has expired and notice as required under § 252.38 of this Part has been sent and received, the pledgee may proceed with the sale of the pawn.

(b) The pawn shall be sold no sooner than thirty (30) days but no later than twelve (12) months after notice of intent to sell has been given. The sale shall be a public sale, with notice of the time, place, and manner to be given in a tribal newspaper of general circulation not less than fourteen (14) days prior to the sale, or in the absence of such a newspaper, in a commercially reasonable manner. The sale itself shall also be conducted in a commercially reasonable manner.

(c) A pledgor may redeem pawn which has been put up for sale at any time before the day it is to be sold by tendering to the pledgee the face amount of the loan, plus the finance charge assessed on the original loan. The pledgee may also collect an additional charge covering the period between the date due and the date of redemption, provided that the rate of charge does not exceed the finance charge on the original loan.

(d) The pledgee may buy at the pledgee's own sale if the collateral is of a type customarily sold in a recognized market or which is the subject of widely distributed standard price quotations.

(e) Pawn held for more than twelve (12) months after notice of intent to sell has been given may not be sold, but the pledgor may redeem the pawn at any time by tendering to the pledgee the face amount of the loan, plus the finance charge that accrued before the end of the sale period provided in paragraph (b) of this section.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976]

§ 252.40 Proceeds of sale.

(a) The following items shall be deducted from the proceeds of the sale of pawned items in the following order of priority:

(1) The expense of advertising and conducting the sale, not to exceed ten percent (10%) of the amount loaned.

(2) The principal amount of the loan, plus any accrued finance charges.

(3) The finance charge calculated at the annual percentage rate of the original loan on the unpaid balance of the loan for the period from the date of default to the date of sale.

(b) Within ten (10) days after the sale of the pledge under this section, the pledgee shall send a notice to the pledgor informing the pledgor of the date of the sale, the proceeds of the sale, the allowable costs of the sale, any additional finance charges, and the amount of any surplus realized. The pledgee shall obtain proof that the notice was delivered.

(c) Any proceeds of the sale remaining after the deductions authorized in paragraph (a) of this section are deemed to be "surplus" and shall be paid over to the pledgor or the pledgor's estate in U.S. currency.

(d) The sale of pledged goods and the application of the proceeds in accordance with this section extinguishes all rights of action of the pledgee for any unpaid principal or finance charge on the original loan.

§ 252.41 Refinancing transaction.

(a) Any pawn agreement may be refinanced, either with or without an increase in the principal amount of the loan, prior to or following the date of expiration of the original period of the loan upon agreement between the parties.

(b) Such refinancing constitutes a new transaction for purposes of all disclosure and record keeping requirements of this Part and requires the issuance of a new ticket or receipt.

(c) The rate of the additional finance charge imposed as part of the refinancing agreement may not exceed the maximum rate imposed by § 252.36.

(d) The total finance charges in a refinancing agreement may not exceed the sum of the following amounts:

(1) The finance charge that the pledgor would have been required to pay upon prepayment on the date of refinancing under § 252.37 of this Part, except that, for the purpose of computing this amount, no minimum finance charge or administrative fee may be included, and

(2) Such additional finance charge as is permissible on the balance of the loan over the remaining period of the loan as extended.

(e) The default and sale procedures of this Part apply to a refinanced pawn transaction in the same manner as they apply to an original pawn transaction.

§ 252.42 Lost pawn receipts or tickets.

(a) Redemption may not be denied on the sole ground that the pledgor is unable to produce a receipt or pawn ticket, provided the pledgor gives a reasonable description of the pawned item or makes an actual identification of the item. The pledgee may require the pledgor to sign a receipt for the re-

deemed pawn. No person other than the pledgor may redeem pawn without a ticket.

(b) No additional charges may be imposed for the loss of a pawn receipt or ticket.

§ 252.43 Outstanding obligations owed to pledgee.

If the pledgor tenders payment to be applied toward redemption of a pawned item, it shall be so applied by the pledgee, irrespective of other outstanding obligations owed by the pledgor to the pledgee. The pledgee may not deny the pledgor the right to redeem the pawn.

§ 252.44 Insurance on pawn.

(a) Any licensee under this Part who lends money or extends credit with personal property as security and holds such property as a pledge shall maintain invault all risk insurance coverage running in favor of the pledgor for such property in amounts based upon a report issued monthly to the insurer. Such monthly report shall be an amount not less than the total agreed replacement value of all pawned items then held by the licensee.

(b) A copy of the insurance policy shall be available for inspection at the licensee's place of business and a copy shall be filed with the Commissioner.

Subpart E—Consumer Credit Transactions Other Than Pawn

§ 252.45 Consumer credit applications.

Any reservation business offering credit which is not secured by pawn shall provide an application for credit to any customer requesting credit. Within thirty (30) days of the date of application, the lender shall act upon the application and notify the customer in writing of the decision with the reason therefor. A business owner who reduces the amount of credit available to a customer or terminates a credit account shall provide written notice to the customer stating the reason for the reduction or termination of such credit.

§ 252.46 Credit disclosure statements.

Upon approval of a credit application the lender shall give the applicant the following information where applicable in a written disclosure statement:

(a) The maximum credit limit of the account.

(b) The conditions under which a finance charge may be imposed.

(c) The period in which payment may be made without incurring a finance charge.

(d) The method used in determining the balance on which the finance charge is calculated.

(e) The method used to calculate the finance charge.

(f) The periodic rates used and the range of balances to which each rate applies.

(g) The conditions under which additional charges may be made and the method for calculating those charges.

(h) A description of any lien that may be acquired on a customer's property.

(i) The minimum payment that must be made on each billing.

§ 252.47 Monthly billing statement.

On all credit accounts on which a finance charge may be imposed and for all other credit accounts when requested by the customer, a licensee shall issue a monthly billing statement to the customer stating the following information where applicable:

(a) The unpaid balance at the start of the billing period.

(b) The amount and date of each extension of credit and identification of each item costing more than ten dollars ($10).

(c) Payments made by a customer and other credits, including returns, rebates, and adjustments.

(d) The finance charge shown in dollars and cents.

(e) The rates used in calculating the finance charge plus the range of balances to which the finance charge was calculated.

(f) The closing date of the billing cycle.

(g) The unpaid balance at that time.

§ 252.48 Translation of disclosure statements.

Disclosure required by §§ 252.46 and 252.47 shall be made in writing regardless of the customer's ability to speak, read, or write the English language. Disclosure to non-English speaking persons shall be translated orally into the appropriate language.

§ 252.49 Usury prohibited.

No reservation business may take or receive money, goods, or other things of value for a loan or forbearance on a debt that exceeds in value the principal plus twenty-four percent (24 percent) per annum finance charge. Any reservation business contracting for, reserving, or receiving directly or indirectly, any greater amount shall forfeit the finance charge.

Subpart F—Enforcement Powers, Procedures and Remedies

§ 252.50 Penalty and forfeiture of merchandise.

Any person other than an enrolled member of the tribe who either resides as a reservation business owner within the exterior boundaries of the Navajo, Hopi, or Zuni Reservations or introduces or attempts to introduce goods or to trade therein without a license shall forfeit all merchandise offered for sale to the Indians or found in the person's possession and is liable to a penalty of five hundred dollars ($500). This section may be enforced by commencing an action in the appropriate United States District Court under the provisions of 28 U.S.C. 1345.

§ 252.51 Authority to close unlicensed reservation businesses.

The Commissioner shall close any reservation business subject to the provisions of this Part that does not hold a valid license or temporary permit.

§ 252.52 Revocation of license and lease and recovery on bond.

The reservation business owner is subject to revocation of license and lease and recovery on the bond in whole or in part in the event of any violation of the regulations of this Part after a show cause proceeding according to the provisions of § 252.56.

[41 FR 22937, June 8, 1976]

§ 252.53 Cease and desist orders.

(a) If the Commissioner believes that violation of the regulations in this Part is occurring, the Commissioner may order the person believed to be in violation to show cause according to the provisions of § 252.56 why a cease and desist order should not be issued.

(b) If the person accused of the violations fails to show cause at the hearing why such an order should not issue, the Commissioner shall issue the order.

(c) A person subject to a cease and desist order issued under this section who violates the order is liable to revocation of license after a show cause proceeding according to the provisions of § 252.56 of this Part.

§ 252.54 Periodic review of performance.

(a) The Commissioner shall review licenses at ten (10) year intervals to determine whether or not the business is operating in accordance with these regulations and all other applicable laws and regulations and whether the business is adequately serving the economic needs of the community.

(b) If, as a result of the review provided in paragraph (a) of this section, the Commissioner finds that the licensee has repeatedly violated these regulations, the Commissioner may order the licensee to show cause according to the provisions of § 252.56 why the licensee's license should not be revoked.

(c) If the licensee fails to show cause why the license should not be revoked, the Commissioner shall revoke the license.

§ 252.55 Price monitoring and control.

(a) A reservation business may not charge its customers unfair or unreasonable prices. To insure compliance with this section, the Commissioner shall perform audits as provided in § 252.58. In performing those audits the Commissioner may inspect all original books, records, and other evidences of the cost of doing business. In

addition, at least once a year the Commissioner shall cause to be made a survey of the prices of flour, sugar, fresh eggs, lard, coffee, ground beef, bread, cheese, fresh milk, canned fruit, and such other goods as the Commissioner deems appropriate in all stores licensed under these regulations and in a representative number of similar stores located in commu ities immediately adjoining the reservations. The results of the survey shall be posted publicly, sent to each licensed business, and made available to the appropriate agency of the tribal government. Copies of the survey shall be available at the office of the Area Director.

(b) If the Commissioner finds that a reservation business is charging higher prices, especially for basic consumer commodities, than those charged on the average based on the studies conducted under the provisions of paragraph (a) of this section, the Commissioner may order the business owner to show cause under the provisions of § 252.56 why an order should not be issued to reduce prices. If the Commissioner determines that the prices charged by the business are not economically justified, based on all of the information, then the Commissioner may order the business to reduce its price on all items determined to be priced too high to a reasonable price as determined by the Commissioner, but in no event to a lower price than the cost of the item increased by a reasonable mark-up.

§ 252.56 Show cause procedures.

(a) When the Commissioner believes there has been a violation of this Part the Commissioner shall serve the licensee with written notice setting forth in detail the nature of the alleged violation and stating what remedial action the Commissioner proposes to take.

(b) The licensee shall have ten (10) days from the date of receipt of notice in which to show cause why the contemplated remedial action should not be ordered.

(c) If within the ten (10) day period the Commissioner determines that the violation may be corrected and the licensee agrees to take the necessary corrective measure, the licensee shall be given the opportunity to take the necessary corrective measures.

(d) If the licensee fails within a reasonable time to correct the violation or to show cause why the contemplated remedial action should not be ordered, the Commissioner shall order the appropriate remedial action.

(e) If the Commissioner orders remedial action the licensee may appeal under the provisions of Part 2 of this Title not later than thirty (30) days after the date on which the remedial action is ordered.

§ 252.57 Procedures to cancel liability on bond.

(a) Any surety who wishes to be relieved from liability arising on a bond issued under this Part shall file with the Commissioner a statement in writing setting forth the desire of the surety to be relieved of liability and the reasons therefor.

(b) The surety shall mail a copy of the statement by certified mail, return receipt requested, to the last known address of the licensee named in the bond.

(c) Twenty (20) days after the statement required in paragraph (b) of this section is mailed to the licensee and the statement required in paragraph (a) of this section is filed with the Commissioner, the surety from all liability thereafter arising on the bond.

(d) If the licensee does not have other bond sufficient to meet the requirements of this Part or has not executed and filed a new or substitute bond within twenty (20) days after the service of the statement, the Commissioner shall declare the license and lease void.

(e) No surety is released from liability under the bond for claims which arose prior to the issuance of the Commissioner's order releasing the surety.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976; 41 FR 22937, June 8, 1976]

§ 252.58 Records, reports, and obligations of reservation business owners.

(a) The Commissioner may, in consultation with interested persons and agencies, promulga.e a model book-

keeping system for use in reservation businesses. Until such model bookkeeping system is promulgated, each business owner shall keep records in accordance with generally accepted accounting principles.

(b) Each reservation business owner shall file with the Area Director an annual report on or before April 15 in a form approved by the Commissioner. Reports shall be subject to a yearly audit. The reports shall contain the names and respective interests of all persons participating in the business.

(c) The business owner or an employee shall record all sales and purchases whether for cash or credit. If the business is on the Navajo Reservation the owner or an employee shall supply the customer with a copy of the sale transaction containing a description of the article purchased or sold, the date of the transaction, and the price. A cash register receipt complies with this paragraph for grocery or dry goods purchases for cash.

(d) The licensee shall keep a duplicate copy of any writing required by paragraph (c) of this section for a period of not less than three (3) years and shall provide the customer or the customer's representative one copy of those writings upon request.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976; 41 FR 13937, Apr. 1, 1976]

§ 252.59 Customer complaint procedures.

(a) Any customer of a licensee may file a complaint with the Commissioner alleging that the licensee has committed a violation of this Part.

(b) Upon receipt of a customer complaint the Commissioner shall initiate show cause proceedings under the provisions of § 252.56 of this Part.

(c) If the Commissioner fails to order remedial action within forty (40) days from the date the complaint is filed, the complainant may appeal under the provisions of Part 2 of this Title not later than seventy (70) days after the date the complaint is filed.

(d) If the Commissioner orders remedial action, the complainant may appeal under the provisions of Part 2 of this Title not later than thirty (30) days after the date on which the remedial action is ordered.

PART 254—OPERATION OF U.S.M.S. "NORTH STAR" BETWEEN SEATTLE, WASH., AND STATIONS OF THE BUREAU OF INDIAN AFFAIRS AND OTHER GOVERNMENT AGENCIES, ALASKA

Sec.

254.1 Responsibility for operation.
254.2 Transportation of freight for Federal agencies and others.
254.3 Employment of Natives.
254.4 Prohibition of trade with Natives.
254.5 Passenger rates.
254.6 Private passengers.
254.7 Transportation of children.
254.8 Transportation of Federal employees and their families and Natives.
254.9 Preferential passengers.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10674, Dec. 24, 1957, unless otherwise noted.

§ 254.1 Responsibility for operation.

(a) The director of the Seattle Liaison Office, Bureau of Indian Affairs, Seattle, Washington, under the jurisdiction of the Area Director, Juneau Area Office, Bureau of Indian Affairs, Juneau, Alaska, has responsibility for the operation of the ship for the Department of the Interior, Bureau of Indian Affairs, including repair, upkeep, payment of bills and employment of personnel.

(b) Itineraries for each voyage shall be made by the Director of the Seattle Liaison Office in consultation with the Area Director of the Juneau Area Office, Bureau of Indian Affairs, Juneau, Alaska. Preference is to be accorded to the work of the Bureau of Indian Affairs. The Area Director is vested with authority to direct the use of the ship to perform special services which may arise and to act in any emergency.

[39 FR 12246, Apr. 4, 1974]

§ 254.2 Transportation of freight for Federal agencies and others.

(a) All agencies of the Federal Government, including activities of the Bureau of Indian Affairs, Alaskan Natives, cooperatives of Alaskan Natives, business enterprises owned and operated by Alaskan Natives and Federal employees shall be charged for

STATUTE II.
July 22, 1790.

CHAP. XXXII.—*An Act to amend the act for the establishment and support of Lighthouses, beacons, buoys, and public piers.*

Expenses of lighthouses, &c. to be defrayed until 1st July, 1791, although not ceded, and States allowed till that day to make cessions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all expenses which shall accrue from and after the fifteenth day of August next, for the necessary support, maintenance and repairs of all lighthouses, beacons, buoys and public piers, within the United States, shall continue to be defrayed by the United States, until the first day of July, one thousand seven hundred and ninety-one, notwithstanding such lighthouses, beacons, buoys, and public piers, with the lands and tenements thereunto belonging, and the jurisdictions of the same, shall not in the mean time be ceded to or vested in the United States, by the state or states respectively, in which the same may be, and that the said time be further allowed to the states respectively to make such cessions.

APPROVED, July 22, 1790.

STATUTE II.
July 22, 1790.

CHAP. XXXIII.—*An Act to regulate trade and intercourse with the Indian tribes.*(a)

Licenses to trade with the Indians, by whom to be granted,

and how to be obtained.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That no person shall be permitted to carry on any trade or intercourse with the Indian tribes, without a license for that purpose under the hand and seal of the superintendent of the department, or of such other person as the President of the United States shall appoint for that purpose; which superintendent, or other person so appointed, shall, on application, issue such license to any proper person, who shall enter into bond with one or more sureties, approved of by the superintendent, or person issuing such license, or by the President of the United States, in the penal sum of one thousand dollars, payable to the President of the United States for the time being, for the use of the United States, conditioned for the true and faithful observance of such rules, regulations and restrictions, as now are, or hereafter shall be made for the government of trade and intercourse with the Indian tribes. The said superintendents, and persons by them licensed as aforesaid, shall be governed in all things touching the said trade and intercourse, by such rules and regulations as the President shall prescribe. And no other person shall be permitted to carry on any trade or intercourse with the Indians without such license as aforesaid. No license shall be granted for a longer term than two years. *Provided nevertheless*, That the President may make such order respecting the tribes surrounded in their settlements by the citizens of the United States, as to secure an intercourse without license, if he may deem it proper.

May be recalled for certain transgressions.

SEC. 2. *And be it further enacted*, That the superintendent, or person issuing such license, shall have full power and authority to recall all such licenses as he may have issued, if the person so licensed shall transgress any of the regulations or restrictions provided for the government of trade and intercourse with the Indian tribes, and shall put in suit such bonds as he may have taken, immediately on the breach of any condition in said bond: *Provided always*, That if it shall appear on trial, that the person from whom such license shall have been recalled, has not offended against any of the provisions of this act, or the regulations prescribed for the trade and intercourse with the Indian tribes, he shall be entitled to receive a new license.

Penalty for trading without license.

SEC. 3. *And be it further enacted*, That every person who shall attempt to trade with the Indian tribes, or be found in the Indian country

(a) See act of March 1, 1793, chap. 19. (Repealed.)

with such merchandise in his possession as are usually vended to the Indians, without a license first had and obtained, as in this act prescribed, and being thereof convicted in any court proper to try the same, shall forfeit all the merchandise so offered for sale to the Indian tribes, or so found in the Indian country, which forfeiture shall be one half to the benefit of the person prosecuting, and the other half to the benefit of the United States.

Sales of lands by Indians, in what cases valid.

Sec. 4. *And be it enacted and declared*, That no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.

Offences committed within the Indian territory, how to be punished.

Sec. 5. *And be it further enacted*, That if any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, shall go into any town, settlement or territory belonging to any nation or tribe of Indians, and shall there commit any crime upon, or trespass against, the person or property of any peaceable and friendly Indian or Indians, which, if committed within the jurisdiction of any state, or within the jurisdiction of either of the said districts, against a citizen or white inhabitant thereof, would be punishable by the laws of such state or district, such offender or offenders shall be subject to the same punishment, and shall be proceeded against in the same manner as if the offence had been committed within the jurisdiction of the state or district to which he or they may belong, against a citizen or white inhabitant thereof.

Proceedings therein.

Sec. 6. *And be it further enacted*, That for any of the crimes or offences aforesaid, the like proceedings shall be had for apprehending, imprisoning or bailing the offender, as the case may be, and for recognizing the witnesses for their appearance to testify in the case, and where the offender shall be committed, or the witnesses shall be in a district other than that in which the offence is to be tried, for the removal of the offender and the witnesses or either of them, as the case may be, to the district in which the trial is to be had, as by the act to establish the judicial courts of the United States, are directed for any crimes or offences against the United States.

Act of Sep. 24, 1789.

Continuance of this act.

Sec. 7. *And be it further enacted*, That this act shall be in force for the term of two years, and from thence to the end of the next session of Congress, and no longer.

Approved, July 22, 1790.

Statute II.

August 4, 1790.

Chap. XXXIV.—*An Act making provision for the [payment of the] Debt of the United States.*(a)

[Obsolete.] Recital.

Whereas, justice and the support of public credit require, that provision should be made for fulfilling the engagements of the United States, in respect to their foreign debt, and for funding their domestic debt upon equitable and satisfactory terms:

Duties on imports and tonnage appropriated to pay interest on the foreign debt and future loans, reserving

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That reserving out of the monies which have arisen since the last day of December last past, and which shall hereafter arise from the duties on goods, wares and merchandise imported into the United States, and on the tonnage of ships or vessels, the yearly sum of six hundred thousand

(a) The acts making provision for the debt of the United States, contracted during the war of the revolution, have been: Act of August 4, 1790, chap. 34; act of August 10, 1790, chap. 29; act of December 27, 1790, chap. 1; act of August 12, 1790, chap. 47; act of May 8, 1792, chap. 38; act of March 2, 1793, chap. 23; act of May 30, 1794, chap. 26; act of January 29, 1795, chap. 13; act of February 18, 1796, chap. 2; act of March 3, 1797, chap. 25; act of March 3, 1791, chap. 15.

said as may be sufficient to satisfy the same, together with all the costs and charges of preparing lists, advertising and notifying as aforesaid, and of sale.

Tax and costs a lien on land till discharged.

Sec. 3. *And be it further enacted*, That the aforesaid tax, including all costs and charges as aforesaid, shall be and remain a lien upon all lands and other real estate on which the same has been assessed, until the tax due upon the same, including all costs and charges, shall have been collected, or until a sale shall have been effected, according to the provision of this act, or of the act to which this is a supplement.

Tracts parcelled may pay in proportion.

Sec. 4. *And be it further enacted*, That in all cases wherein any tract of land may have been assessed in one assessment, which at the time when such assessment was made, was actually divided into two, or more distinct parcels, each parcel having one or more distinct proprietor or proprietors, it shall be the duty of the collector, to receive in manner aforesaid, from any proprietor or proprietors thus situated, his or their proportion of the tax due upon such tract; and thereupon, the land of the proprietor or proprietors upon which the tax shall have been thus paid, shall be for ever discharged from any part of the tax due under the original assessment.

Provision for sale of lands of persons not named correctly.

Sec. 5. *And be it further enacted*, That in any case in which it may have happened that lands actually belonging to one person, may have been, or hereafter shall be assessed in the name of another, and no sale of the same shall yet have been made, the same proceedings shall be had for the sale of the aforesaid lands, in order to raise the tax assessed in relation to the same, as is provided by the eleventh section of the act to which this is a supplement, in the case of lands assessed, the owner whereof is unknown: and such sale shall transfer and pass to the purchaser, a good and effectual title.

1798, ch. 75.

Right of redemption secured under regulations.

Sec. 6. *And be it further enacted*, That the right of redemption reserved to the owners of lands and tenements sold under this act, or the act to which this is a supplement, shall, in no wise, be affected or impaired: *Provided always*, that the owners of lands which shall thus be sold after the passing of this act, in order to avail themselves of that right, shall make payment or tender of payment within two years from the time of sale, for the use of the purchaser, his heirs or assigns, of the amount of the said tax, costs and charges, with interest for the same, at the rate of twenty-five per cent. per annum.

Secretary of the Treasury authorized to augment compensation of officers.

Sec. 7. *And be it further enacted*, That the Secretary of the Treasury shall be and hereby is authorized and empowered, under the direction of the President of the United States, to augment the compensation fixed by law, for the commissioner or for the principal and assistant assessors or either of them, in any division where it shall be found necessary for carrying into effect the act intituled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," so however, as that the commissioner shall in no case receive more than five dollars per day, nor the principal or assistant assessor in any case receive more than three dollars per day, which additional compensation shall be subject to the same rules of settlement as are established by the act last aforesaid.

1798, ch. 70.

Approved, March 16, 1802.

Statute I.

March 30, 1802.

Act of April 29, 1816, ch. 163.
Act of March, 1817, ch. 43.

Chap. XIII.—*An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.*(a)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following boundary

(a) Regulations of intercourse and trade with the Indians. The 106th section of the act of March 2, 1799, chap. 22, provides that no duties shall be levied on peltries and goods of Indians, brought into the United States.

Act of May 6, 1802. ch. 54.

Boundaries to be established according to treaties, to be marked.

Beginning thereof.

Indian boundary described.

line, established by treaty between the United States and various Indian tribes, shall be clearly ascertained, and distinctly marked in all such places as the President of the United States shall deem necessary, and in such manner as he shall direct, to wit: Beginning at the mouth of the Cayahoga river on Lake Erie, and running thence up the same to the portage between that and the Tuscaroras branch of the Muskingum; thence, down that branch, to the crossing place above Fort Laurence; thence westwardly to a fork of that branch of the Great Miami river running into the Ohio, at or near which fork stood Laromie's store, and where commences the portage, between the Miami of the Ohio and St. Mary's river, which is a branch of the Miami, which runs into Lake Erie; thence a westwardly course to Fort Recovery, which stands on a branch of the Wabash; thence southwestwardly, in a direct line to the Ohio, so as to intersect that river, opposite the mouth of Kentucky or Cuttawa river; thence down the said river Ohio to the tract of one hundred and fifty thousand acres, near the rapids of the Ohio, which has been assigned to General Clarke, for the use of himself and his warriors; thence around the said tract, on the line of the said tract, till it shall again intersect the said river Ohio; thence down the same to a point opposite the high lands or ridge between the mouth of the Cumberland and Tennessee rivers; thence southeastwardly on the said ridge, to a point, from whence a southwest line will strike the mouth of Duck river; thence, still eastwardly on the said ridge, to a point forty miles above Nashville; thence northeast to Cumberland river; thence up the said river to where the Kentucky road crosses the same; thence to the Cumberland mountain, at the point of Campbell's line; thence in a southwestwardly direction along the foot of the Cumberland mountain to Emory's river; thence down the same to its junction with the river Clinch; thence down the river Clinch to Hawkins's line: thence along the same to a white oak, marked one mile tree: thence south fifty-one degrees west, three hundred and twenty-eight chains, to a large ash tree on the bank of the river Tennessee, one mile below southwest point; thence up the northeast margin of the river Tennessee (not including islands) to the Wild Cat Rock, below Tellico block-house; thence in a direct line to the Militia spring, near the Marrville road leading from Tellico; thence from the said spring to the Chilhowee mountain by a line so to be run as will leave all the farms on Nine Mile creek to the northward and eastward of it, and to be continued along the Chilhowee mountain until it strikes Hawkins's line; thence along the said line to the great Iron mountain; and from the top of which a line to be continued in a southeastwardly course to where the most southern branch of Little river crosses the divisional line to Tugaloo river; thence along the South Carolina Indian boundary to and over the Oconna mountain, in a southwest course to Tugaloo river; thence in a direct line to the top of Currahee mountain, where the Creek line passes it; thence to the head or source of the main south branch of the Oconee river, called the

---

The acts which are no longer in force, have been: An act to regulate trade and intercourse with the Indian tribes, July 22, 1790, chap. 33.—Expired. An act to regulate trade and intercourse with the Indian tribes, March 1, 1793.—Repealed by act of May 19, 1796, chap. 30. An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, May 19, 1796, chap. 30.—Expired. An act for the preservation of peace with the Indian tribes, January 17, 1800, chap. 5.—Expired. An act supplementary to the "act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," April 22, 1800, chap. 30.—Expired.

The acts now in operation and force, are: An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, March 30, 1802, chap. 13; an act erecting Louisiana into two territories, and providing for the temporary government thereof, March 26, 1804, chap. 38, sec. 13; an act supplementary to the act passed the thirtieth of March, one thousand eight hundred and two, to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, April 29, 1816, chap. 185; an act to provide for the punishment of certain crimes and offences committed within the Indian boundaries, March 3, 1817, chap. 92; an act to amend an act entitled, "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved thirtieth March, one thousand eight hundred and two, May 6, 1822, chap. 53; an act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, June 30, 1834, ch. 161. Also ch. 162

Appalachee; thence down the middle of the said main south branch and river Oconee, to its confluence with Ockmulgee, which forms the river Altamaha; thence down the middle of the said Altamaha, to the old line on the said river; and thence along the said old line to the river St. Mary's: *Provided always*, that if the boundary line between the said Indian tribes and the United States shall, at any time hereafter, be varied, by any treaty which shall be made between the said Indian tribes and the United States, then all the provisions contained in this act shall be construed to apply to the said line as to be varied, in the same manner as said provisions apply, by force of this act, to the boundary line herein before recited.

Boundary terminates.

Indian boundary may be varied by treaties and the act to apply.

Sec. 2. *And be it further enacted*, That if any citizen of, or other person resident in, the United States, or either of the territorial districts of the United States, shall cross over, or go within the said boundary line, to hunt, or in any wise destroy the game; or shall drive, or otherwise convey any stock of horses or cattle to range on any lands allotted or secured by treaty with the United States, to any Indian tribes, he shall forfeit a sum not exceeding one hundred dollars, or be imprisoned not exceeding six months.(a)

Line not to be crossed.

Penalty for trespass.

Sec. 3. *And be it further enacted*, That if any such citizen or other person, shall go into any country which is allotted, or secured by treaty as aforesaid, to any of the Indian tribes south of the river Ohio, without a passport first had and obtained from the governor of some one of the United States, or the officer of the troops of the United States, commanding at the nearest post on the frontiers, or such other person as the President of the United States may, from time to time, authorize to grant the same, shall forfeit a sum not exceeding fifty dollars, or be imprisoned not exceeding three months.(b)

No one to go into the Indian country without a passport.

By whom passports to be granted.

Penalty for going into the Indian territory without a passport.

Sec. 4. *And be it further enacted*, That if any such citizen, or other person, shall go into any town, settlement or territory, belonging, or secured by treaty with the United States, to any nation or tribe of Indians, and shall there commit robbery, larceny, trespass or other crime, against the person or property of any friendly Indian or Indians, which would be punishable, if committed within the jurisdiction of any state, against a citizen of the United States: or, unauthorized by law, and with a hostile intention, shall be found on any Indian land, such offender shall forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding twelve months; and shall also, when property is taken or destroyed, forfeit and pay to such Indian or Indians, to whom the property taken and destroyed belongs, a sum equal to twice the just value of the property so taken or destroyed: and if such offender shall be unable to pay a sum at least equal to the said just value, whatever such payment shall fall short of the said just value, shall be paid out of the treasury of the United States: *Provided nevertheless*, that no such Indian shall be entitled to any payment out of the treasury of the United States, for any such property taken or destroyed, if he, or any of the nation to which he belongs, shall have sought private revenge, or attempted to obtain satisfaction by any force or violence.

Offences in the Indian territory punishable.

Penalties.

Indians not to be remunerated if they use violence.

Sec. 5. *And be it further enacted*, That if any such citizen, or other person, shall make a settlement on any lands belonging, or secured, or granted by treaty with the United States, to any Indian tribe, or shall

No settlement or survey to be made.

(a) The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the government of the Union. Worcester v. The State of Georgia, 6 Peters' Rep. 515.

(b) The act of the 30th March, 1802, having described what should be considered as the Indian country at that time, as well as at any future time, when purchases of territory should be made from the Indians, the carrying of spirituous liquors into the territory so purchased after March, 1802, although the same should, at the time, be frequented and inhabited by the Indians exclusively, could not be an offence within the meaning of the before mentioned act of Congress, so as to subject the goods of the trader found within those territories, to seizure and forfeiture. The American Fur Company v. The United States. 2 Peters, 358.

Penalties.

Military force may be employed against intruders.

survey, or attempt to survey, such lands, or designate any of the boundaries, by marking trees, or otherwise, such offender shall forfeit a sum not exceeding one thousand dollars, and suffer imprisonment, not exceeding twelve months. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force, as he may judge necessary, to remove from lands, belonging or secured by treaty, as aforesaid, to any Indian tribe, any such citizen, or other person, who has made, or shall hereafter make, or attempt to make a settlement thereon.

Murder of Indians punishable with death.

SEC. 6. *And be it further enacted*, That if any such citizen, or other person, shall go into any town, settlement or territory belonging to any nation or tribe of Indians, and shall there commit murder, by killing any Indian or Indians, belonging to any nation or tribe of Indians, in amity with the United States, such offender, on being thereof convicted, shall suffer death.

Traders who reside must have a license.

1822, ch. 58.

SEC. 7. *And be it further enacted*, That no such citizen, or other person, shall be permitted to reside at any of the towns, or hunting camps, of any of the Indian tribes as a trader, without a license under the hand and seal of the superintendent of the department, or of such other person as the President of the United States shall authorize to grant licenses for that purpose: which superintendent, or person authorized, shall, on application, issue such license, for a term not exceeding two years, to such trader, who shall enter into bond with one or more sureties, approved of by the superintendent, or person issuing such license, or by the President of the United States, in the penal sum of one thousand dollars, conditioned for the true and faithful observance of such regulations and restrictions, as are, or shall be made for the government of trade and intercourse with the Indian tribes: and the superintendent, or person issuing such license, shall have full power and authority to recall the same, if the person so licensed shall transgress any of the regulations, or restrictions, provided for the government of trade and intercourse with the Indian tribes; and shall put in suit such bonds as he may have taken, on the breach of any condition therein contained.

Licenses not to exceed two years.

Bond to be given by licensed traders.

License may be recalled for misconduct.

Goods of unlicensed traders forfeited.

Further penalty.

SEC. 8. *And be it further enacted*, That any such citizen or other person, who shall attempt to reside in any town or hunting camp, of any of the Indian tribes, as a trader, without such license, shall forfeit all the merchandise offered for sale to the Indians, or found in his possession, and shall, moreover, be liable to a fine not exceeding one hundred dollars, and to imprisonment not exceeding thirty days.

Articles which shall not be purchased from Indians.

Penalty.

SEC. 9. *And be it further enacted*, That if any such citizen, or other person, shall purchase, or receive of any Indian, in the way of trade or barter, a gun, or other article commonly used in hunting, any instrument of husbandry, or cooking utensil, of the kind usually obtained by the Indians, in their intercourse with white people, or any article of clothing, excepting skins or furs, he shall forfeit a sum not exceeding fifty dollars, and be imprisoned not exceeding thirty days.

Horses not to be bought or sold without license.

Fifteen days notice before sale of a horse, and description given.

SEC. 10. *And be it further enacted*, That no such citizen or other person shall be permitted to purchase any horse of an Indian, or of any white man in the Indian territory, without special license for that purpose; which license, the superintendent, or such other person as the President shall appoint, is hereby authorized to grant, on the same terms, conditions and restrictions, as other licenses are to be granted under this act: and any such person, who shall purchase a horse or horses, under such license, before he exposes such horse or horses for sale, and within fifteen days after they have been brought out of the Indian country, shall make a particular return to the superintendent, or other person, from whom he obtained his license, of every horse purchased by him, as aforesaid: describing such horses, by their colour, height, and other

natural or artificial marks, under the penalty contained in their respective bonds. And every such person, purchasing a horse or horses, as aforesaid, in the Indian country, without a special license, shall for every horse thus purchased and brought into any settlement of citizens of the United States, forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding thirty days. And every person, who shall purchase a horse, knowing him to be brought out of the Indian territory, by any person or persons, not licensed, as above, to purchase the same, shall forfeit the value of such horse. Penalties.

Agents of the public not to trade.

SEC. 11. *And be it further enacted*, That no agent, superintendent, or other person authorized to grant a license to trade, or purchase horses, shall have any interest or concern in any trade with the Indians, or in the purchase or sale of any horse to or from any Indian, excepting for and on account of the United States; and any person offending herein, shall forfeit a sum not exceeding one thousand dollars, and be imprisoned not exceeding twelve months.

No purchases from Indians but under treaties.

SEC. 12. *And be it further enacted*, That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation, or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty or convention, entered into pursuant to the constitution: and it shall be a misdemeanor in any person, not employed under the authority of the United States, to negotiate such treaty or convention, directly or indirectly, to treat with any such Indian nation, or tribe of Indians, for the title or purchase of any lands by them held or claimed, punishable by fine not exceeding one thousand dollars, and imprisonment not exceeding twelve months: *Provided nevertheless*, that it shall be lawful for the agent or agents of any state, who may be present at any treaty held with Indians under the authority of the United States, in the presence, and with the approbation of the commissioner or commissioners of the United States, appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made, for their claims to lands within such state, which shall be extinguished by the treaty.

Misdemeanor to attempt procuring them in any other manner.

How punishable.

Exception as to states making purchases in a certain manner.

President authorized to use means of civilizing the Indians.

Means limited.

SEC. 13. *And be it further enacted*, That in order to promote civilization among the friendly Indian tribes, and to secure the continuance of their friendship, it shall be lawful for the President of the United States, to cause them to be furnished with useful domestic animals, and implements of husbandry, and with goods or money, as he shall judge proper, and to appoint such persons, from time to time, as temporary agents, to reside among the Indians, as he shall think fit: *Provided*, that the whole amount of such presents, and allowance to such agents, shall not exceed fifteen thousand dollars per annum.

Means of redress prescribed for transgressions of Indians.

SEC. 14. *And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or cross the said boundary line, into any state or territory inhabited by citizens of the United States, and there take, steal or destroy any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, or shall commit any murder, violence or outrage, upon any such citizen or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney, or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose; who, upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe, to which such Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding twelve months, then it shall be the duty of such superintendent or other person authorized as aforesaid, to make return

of his doings to the President of the United States, and forward to him all the documents and proofs in the case, that such further steps may be taken, as shall be proper to obtain satisfaction for the injury: and in the mean time, in respect to the property so taken, stolen or destroyed, the United States guarantee to the party injured, an eventual indemnification: *Provided always*, that if such injured party, his representative, attorney or agent, shall, in any way, violate any of the provisions of this act, by seeking, or attempting to obtain private satisfaction or revenge, by crossing over the line, on any of the Indian lands, he shall forfeit all claim upon the United States, for such indemnification: *And provided also*, that nothing herein contained shall prevent the legal apprehension or arresting, within the limits of any state or district, of any Indian having so offended: *And provided further*, that it shall be lawful for the President of the United States, to deduct such sum or sums, as shall be paid for the property taken, stolen or destroyed by any such Indian, out of the annual stipend, which the United States are bound to pay to the tribe, to which such Indian shall belong.

Party injured loses his remedy if he seeks private revenge or redress.

But this does not exempt the Indian offending from legal apprehension in U. States.

How property is to be paid for.

Sec. 15. *And be it further enacted*, That the superior courts in each of the said territorial districts, and the circuit courts, and other courts of the United States of similar jurisdiction in criminal causes, in each district of the United States, in which any offender against this act shall be apprehended, or, agreeably to the provisions of this act, shall be brought for trial, shall have, and are hereby invested with full power and authority to hear and determine all crimes, offences and misdemeanors, against this act: such courts proceeding therein in the same manner, as if such crimes, offences and misdemeanors had been committed within the bounds of their respective districts; and in all cases where the punishment shall not be death, the county courts of quarter sessions in the said territorial districts, and the district courts of the United States in their respective districts, shall have, and are hereby invested with like power to hear and determine the same, any law to the contrary notwithstanding: and in all cases, where the punishment shall be death, it shall be lawful for the governor of either of the territorial districts where the offender shall be apprehended, or into which he shall be brought for trial, to issue a commission of over and terminer to the superior judges of such district, who shall have full power and authority to hear and determine all such capital cases, in the same manner as the superior courts of such districts have in their ordinary sessions; and when the offender shall be apprehended, or brought for trial into any of the United States, except Kentucky or Tennessee, it shall be lawful for the President of the United States, to issue a like commission to any one or more judges of the supreme court of the United States, and the judge of the district in which such offender may have been apprehended or shall have been brought for trial; which judges, or any two of them, shall have the same jurisdiction in such capital cases, as the circuit court of such district, and shall proceed to trial and judgment, in the same manner as such circuit court might or could do. And the district courts of Kentucky, Tennessee and Maine shall have jurisdiction of all crimes, offences and misdemeanors committed against this act, and shall proceed to trial and judgment in the same manner, as the circuit courts of the United States.

What courts have jurisdiction in these cases.

Sec. 16. *And be it further enacted*, That it shall be lawful for the military force of the United States to apprehend every person who shall, or may be found in the Indian country over and beyond the said boundary line between the United States and the said Indian tribes, in violation of any of the provisions or regulations of this act, and him or them immediately to convey, in the nearest, convenient and safe route, to the civil authority of the United States, in some one of the three next adjoining states or districts, to be proceeded against in due course of law: *Provided*, that no person, apprehended by military force as aforesaid,

Persons crossing the line and going into the Indian country contrary to this act, how to be dealt with.

shall be detained longer than five days after the arrest, and before removal. And all officers and soldiers who may have any such person or persons in custody, shall treat them with all the humanity which the circumstances will possibly permit; and every officer and soldier who shall be guilty of maltreating any such person, while in custody, shall suffer such punishment as a court martial shall direct: *Provided*, that the officer having custody of such person or persons shall, if required by such person or persons, conduct him or them to the nearest judge of the supreme or superior court of any state, who, if the offence is bailable, shall take proper bail if offered, returnable to the district court next to be holden in said district, which bail the said judge is hereby authorized to take, and which shall be liable to be estreated as any other recognizance for bail in any court of the United States; and if said judge shall refuse to act, or the person or persons fail to procure satisfactory bail, then the said person or persons are to be proceeded with according to the directions of this act.

Military not to use violence.

Violators of this law, if found within the U. S. how punishable.

Sec. 17. *And be it further enacted*, That if any person, who shall be charged with a violation of any of the provisions or regulations of this act, shall be found within any of the United States, or either of the territorial districts of the United States, such offender may be there apprehended and brought to trial, in the same manner, as if such crime or offence had been committed within such state or district; and it shall be the duty of the military force of the United States, when called upon by the civil magistrate, or any proper officer, or other person duly authorized for that purpose and having a lawful warrant, to aid and assist such magistrate, officer, or other person authorized, as aforesaid, in arresting such offender, and him committing to safe custody, for trial according to law.

How penalties are to be fixed.

To whose benefit.

Sec. 18. *And be it further enacted*, That the amount of fines, and duration of imprisonment, directed by this act as a punishment for the violation of any of the provisions thereof, shall be ascertained and fixed, not exceeding the limits prescribed, in the discretion of the court, before whom the trial shall be had; and that all fines and forfeitures, which shall accrue under this act, shall be one half to the use of the informant, and the other half to the use of the United States; except where the prosecution shall be first instituted on behalf of the United States; in which case the whole shall be to their use.

Trade and intercourse with Indians under circumstances described not forbidden by this act.

Sec. 19. *And be it further enacted*, That nothing in this act shall be construed to prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the ordinary jurisdiction of any of the individual states; or the unmolested use of a road from Washington district to Mero district, or to prevent the citizens of Tennessee from keeping in repair the said road, under the direction or orders of the governor of said state, and of the navigation of the Tennessee river, as reserved and secured by treaty; nor shall this act be construed to prevent any person or persons travelling from Knoxville to Price's settlement, or to the settlement on Obed's river, (so called,) provided they shall travel in the trace or path which is usually travelled, and provided the Indians make no objection; but if the Indians object, the President of the United States is hereby authorized to issue a proclamation, prohibiting all travelling on said traces, or either of them, as the case may be, after which, the penalties of this act shall be incurred by every person travelling or being found on said traces, or either of them, to which the prohibition may apply, within the Indian boundary, without a passport.

President to cause boundaries to be ascertained and marked.

Sec. 20. *And be it further enacted*, That the President of the United States be, and he is hereby authorized to cause to be clearly ascertained and distinctly marked, in all such places as he shall deem necessary, and in such manner as he shall direct, any other boundary lines between the

United States and any Indian tribe, which now are, or hereafter may be established by treaty.

He may take measures to prevent the sale of spirituous liquors to the Indians.

SEC. 21. *And be it further enacted*, That the President of the United States be authorized to take such measures, from time to time, as to him may appear expedient to prevent or restrain the vending or distributing of spirituous liquors among all or any of the said Indian tribes, any thing herein contained to the contrary thereof notwithstanding.

This act to be in force from its date.

Proceedings under not to be affected by act of Feb. 19, 1799, ch. 8.

SEC. 22. *And be it further enacted*, That this act shall be in force from the passage thereof; and so far as respects the proceedings under this act, it is to be understood, that the act, intituled "An act to amend an act, intituled An act giving effect to the laws of the United States within the district of Tennessee," is not to operate.(*a*)

APPROVED, March 30, 1802.

(*a*) The decisions of the courts of the United States, on the subject of the Indians, have been:

It was doubted whether a state can be seized in fee of lands subject to the Indian title, and whether a decision that they were seized in fee, might not be construed to amount to a decision that their grantee might maintain an ejectment for them, notwithstanding that title. The majority of the court is of opinion that the nature of the Indian title, which is certainly to be respected by all courts until it be legitimately extinguished, is not such as to be absolutely repugnant to a seisin in fee on the part of the state. Fletcher v. Peck, 6 Cranch, 87; 2 Cond. Rep. 308.

The acts of assembly of North Carolina, passed between the years 1783 and 1789, avoid all entries, surveys, and grants of land set apart for the Cherokee Indians, and no title can be acquired to these lands. Danforth's Lessee v. Thomas, 1 Wheat. 155; 3 Cond. Rep. 524.

The boundaries of the reservation made by the laws of North Carolina, have been altered by treaties with the Indians; but it seems that the mere extinguishment of their title does not subject the land to entry, unless expressly authorized by the legislature. *Ibid.*

The condition of the Indians, in relation to the United States, is perhaps unlike that of any other two people in existence. In general, nations not owing a common allegiance, are foreign to each other. The term foreign nation, is with strict propriety applicable by either to the other. But the relation of the Indians to the United States, is marked by peculiar and cardinal distinctions, which exist no where else. The Cherokee Nation v. The State of Georgia, 5 Peters, 1.

The Indians are acknowledged to have an unquestionable, and heretofore an unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to the government. It may well be doubted, whether those tribes which reside within the acknowledged boundaries of the United States, can with strict accuracy be denominated foreign nations. They may more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title, independent of their will, which must take effect in point of possession, when their right of possession ceases; meanwhile they are in a state of pupilage. Their relations to the United States resemble that of a ward to his guardian. They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their great father. *Ibid.*

The treaties and laws of the United States, contemplate the Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the government of the Union. Worcester v. The State of Georgia, 6 Peters, 515.

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial; with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate, than the first discoverer of the coast of the particular region claimed: and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term "nation," so generally applied to them, means "a people distinct from others." The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and, consequently, admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves; having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to other nations of the earth. They are applied to all in the same sense. *Ibid.*

One uniform rule seems to have prevailed in the British provinces in America, by which Indian lands were held and sold, from their first settlement, as appears by their laws; that friendly Indians were protected in the possession of the lands they occupied, and were considered as owning them by a perpetual right of possession in the tribe or nation inhabiting them, as their common property, from generation to generation, not as the right of the individuals located on particular spots. Subject to this right of possession, the ultimate fee was in the crown, and its grantees; which could be granted by the crown or colonial legislatures, while the lands remained in possession of the Indians; though possession could not be taken without their consent. Mitchell v. United States, 9 Peters, 711.

Individuals could not purchase Indian lands without permission or license from the crown, colonial governors, or according to the rules prescribed by colonial laws; but such purchases were valid with such license, or in conformity with the local laws: and by this union of the perpetual right of occupancy with the ultimate fee, which passed from the crown by the license, the title of the purchaser became complete. *Ibid.*

Indian possession or occupation was considered with reference to their habits and modes of life; their hunting grounds were as much in their actual possession, as the cleared fields of the whites; and their rights to its exclusive enjoyment in their own way, and for their own purposes, were as much respected, until they abandoned them, made a cession to the government, or an authorized sale to individuals. In

Statute I.
April 2, 1802.

[Obsolete.]
Appropriation.

CHAP. XV.—*An Act making a partial appropriation for the support of government, during the year one thousand eight hundred and two.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the sum of one hundred thousand dollars, to be paid out of any monies in the treasury, not otherwise appropriated, shall be, and the same hereby is appropriated towards defraying the expenditure of the civil list, including the contingent expenses of the several departments, during the year one thousand eight hundred and two.

APPROVED, April 2, 1802.

---

either case their rights became extinct, the lands could be granted disencumbered of the right of occupancy, or enjoyed in full dominion by the purchasers from the Indians. Such was the tenure of Indian lands by the laws of Massachusetts, Connecticut, Rhode Island, New Hampshire, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina and Georgia. *Ibid.*

Grants made by the Indians at public councils, since the treaty at Fort Stanwick's, have been made directly to the purchasers, or to the state in which the land lies, in trust for them, or with directions to convey to them; of which there are many instances of large tracts so sold and held; especially in New York. *Ibid.*

It was an universal rule, that purchases made at Indian treaties, in the presence, and with the approbation of the officer under whose direction they were held by the authority of the crown, gave a valid title to the lands; it prevailed under the laws of the states after the revolution, and yet continues in those where the right to the ultimate fee is owned by the states, or their grantees. It has been adopted by the United States, and purchases made at treaties held by their authority, have been always held good by the ratification of the treaty, without any patent to the purchasers from the United States. This rule in the colonies was founded on a settled rule of the law of England, that by his prerogative, the king was the universal occupant of all vacant lands in his dominions, and had the right to grant them at his pleasure, or by his authorized officers. *Ibid.*

When the United States acquired and took possession of the Floridas, the treaties which had been made with the Indian tribes, before the acquisition of the territory by Spain and Great Britain, remained in force over all the ceded territory, as the laws which regulated the relations with all the Indians who were parties to them, and were binding on the United States, by the obligation they had assumed by the Louisiana treaty, as a supreme law of the land, which was inviolable by the power of Congress. They were also binding as the fundamental law of Indian rights; acknowledged by royal orders, and municipal regulations of the province, as the laws and ordinances of Spain in the ceded provinces, which were declared to continue in force by the proclamation of the governor in taking possession of the provinces; and by the acts of Congress, which assured all the inhabitants of protection in their property. It would be an unwarranted construction of these treaties, laws, ordinances and municipal regulations, to decide that the Indians were not to be maintained in the enjoyment of all the rights which they could have enjoyed under either, had the provinces remained under the dominion of Spain. It would be rather a perversion of their spirit, meaning and terms, contrary to the injunction of the law under which the court acts, which makes the stipulations of any treaty, the laws and ordinances of Spain, and these acts of Congress, so far as either apply to this case, the standard rules for its decision. *Ibid.*

The treaties with Spain and England, before the acquisition of Florida by the United States, which guaranteed to the Seminole Indians their lands according to the right of property with which they possessed them, were adopted by the United States; who thus became the protectors of all the rights they had previously enjoyed, or could of right enjoy under Great Britain or Spain, as individuals or nations, by any treaty, to which the United States thus became parties in 1803. *Ibid.*

The Indian right to the lands as property, was not merely of possession, that of alienation was concomitant; both were equally secured, protected and guaranteed by Great Britain and Spain, subject only to ratification and confirmation by the license, charter or deed from the governor representing the king. Such purchases enabled the Indians to pay their debts, compensate for their depredations on the traders resident among them to provide for their wants; while they were available to the purchasers as payment of the considerations which at their expense had been received by the Indians. It would have been a violation of the faith of the government to both, to encourage traders to settle in the province, to put themselves and property in the power of the Indians, to suffer the latter to contract debts, and when willing to pay them by the only means in their power, a cession of their lands, withhold an assent to the purchase, which by their laws or municipal regulations, was necessary to vest a title. Such a course was never adopted by Great Britain, in any of her colonies, nor by Spain in Louisiana or Florida. *Ibid.*

The laws made it necessary, when the Indians sold their lands, to have the deeds presented to the governor for confirmation. The sales by the Indians transferred the kind of right which they possessed; the ratification of the sale by the governor, must be regarded as a relinquishment of the title of the crown to the purchaser; and no instance is known where permission to sell has been "refused, or the rejection of an Indian sale." *Ibid.*

The colonial charters, a great portion of the individual grants by the proprietary and royal governments, and a still greater portion by the states of the Union after the revolution, were made for lands within the Indian hunting grounds. North Carolina and Virginia to a great extent paid their officers and soldiers of the revolutionary war by such grants, and extinguished the arrears due the army by similar means. It was one of the great resources which sustained the war, not only by those states, but by other states. The ultimate fee, encumbered with the right of Indian occupancy, was in the crown previous to the revolution, and in the states of the Union afterwards, and subject to grant. This right of occupancy was protected by the political power, and respected by the courts, until extinguished, when the patentee took the unencumbered fee. So the supreme court and the state courts have uniformly held. Clark v. Smith, 13 Peters, 195.

and 7th sections of the act of March 3, 1817, ch. 109, continuing in force an act, &c. revived and made perpetual.

hundred and seventeen, entitled "An act to continue in force an act further to provide for the collection of duties on imports and tonnage, passed the third day of March, one thousand eight hundred and fifteen, and for other purposes," be, and the same are hereby, revived and made perpetual.

APPROVED, May 6, 1822.

STATUTE I.

May 6, 1822.

CHAP. LVII.—*An Act for the relief of certain insolvent debtors.*

Act of March 3, 1803, ch. 31. The provisions in the act for the relief of insolvent debtors within the District of Columbia, which requires a year's residence, repealed.

Proviso.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That so much of the seventeenth section of the act, entitled "An act for the relief of insolvent debtors within the District of Columbia," approved on the third day of March, one thousand eight hundred and three, as declares that the provisions of the said act shall not be construed to extend to any debtor who has not resided in the District of Columbia one year next preceding his application for relief under the said act, shall be, and the same is hereby, repealed: *Provided*, That no discharge under this act, or the act to which it is amendatory, shall operate against any creditor residing without the limits of the District of Columbia, except the creditor at whose instance the debtor may be confined. This act shall commence and be in force from and after the passing thereof.

This act in force from its passing.

APPROVED, May 6, 1822.

STATUTE I.

May 6, 1822.

CHAP. LVIII.—*An Act to amend an act, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved thirtieth March, one thousand eight hundred and two.*

The seventh section of the act of March 30, 1802, ch. 13, repealed.

Superintendents and agents may grant licenses.

Licenses to be granted only to citizens who are to give bond with securities, &c.

Licenses for 7 years for trade with remote tribes, and 2 years with others.

Superintendents and agents to return abstract of licenses to be laid before Congress.

The President may direct Indian agents, &c. to cause the stores and packages of goods of traders to be searched for ardent spirits, &c.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the seventh section of the act, entitled "An act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers," shall be, and the same is hereby, repealed; and from and after the passing of this act, it shall be lawful for the superintendents of Indian affairs in the territories and Indian agents, under the direction of the President of the United States, to grant licenses to trade with Indian tribes; which licenses shall be granted to citizens of the United States, and to none others, taking from them bonds with securities in the penal sum not exceeding five thousand dollars, proportioned to the capital employed, and conditioned for the due observance of the laws regulating trade and intercourse with the Indian tribes; and said licenses may be granted for a term not exceeding seven years for the trade with the remote tribes of Indians beyond the Mississippi, and two years for the trade with all the other tribes. And the superintendents and agents shall return to the Secretary of War, within each year, an abstract of all licenses granted, showing by and to whom, when, and where granted, with the amount of the bonds and capital employed, to be laid before Congress, at the next session thereof.

SEC. 2. *And be it further enacted*, That it shall and may be lawful for the President of the United States, in execution of the power vested in him by the twenty-first section of the act of the thirtieth of March, one thousand eight hundred and two, aforesaid, to which this is an amendment, to direct Indian agents, governors of territories acting as superintendents of Indian affairs, and military officers, to cause the stores and packages of goods of all traders to be searched, upon suspicion or information that ardent spirits are carried into the Indian countries by said traders in violation of the said twenty-first section of the act to which

this is an amendment; and if any ardent spirits shall be so found, all the goods of the said traders shall be forfeited, one half to the use of the informer, the other half to the use of the government, his license cancelled, and bond put in suit.

If ardent spirits are found, the goods are forfeited.

Sec. 3. *And be it further enacted*, That all purchases for and on account of Indians, for annuities, presents, and otherwise, shall be made by the Indian agents and governors of territories acting as superintendents, within their respective districts; and all persons whatsoever, charged or trusted with the disbursement or application of money, goods, or effects, of any kind, for the benefit of Indians, shall settle their accounts annually, at the War Department, on the first day of September; and copies of the same shall be laid before Congress at the commencement of the ensuing session, by the proper accounting officers, together with a list of the names of all persons to whom money, goods, or effects, had been delivered within the said year, for the benefit of the Indians, specifying the amount and object for which it was intended, and showing who are delinquent, if any, in forwarding their accounts according to the provisions of this act.

All purchases of annuities, &c. for Indians, to be made by agents and governors of territories acting, &c.

Accounts annually settled at the War Department, &c.

Sec. 4. *And be it further enacted*, That, in all trials about the right of property, in which Indians shall be party on one side and white persons on the other, the burthen of proof shall rest upon the white person, in every case in which the Indian shall make out a presumption of title in himself from the fact of previous possession and ownership.

Trials about the right of property, where Indians are parties, &c.

Sec. 5. *And be it further enacted*, That it shall and may be lawful for the President of the United States, from time to time, to require additional security, and in larger amounts, from all persons charged or trusted, under the laws of the United States, with the disbursement or application of money, goods, or effects, of any kind, for the benefit of the Indians.

Additional security, &c. from persons intrusted with the disbursement of money, &c.

Sec. 6. *And be it further enacted*, That the President of the United States, by and with the advice and consent of the Senate, may appoint a superintendent of Indian affairs, to reside at St. Louis, whose powers shall extend to all Indians frequenting that place, whose salary shall be fifteen hundred dollars per annum; and one agent for tribes within the limits of East and West Florida, with a salary of fifteen hundred dollars.

A superintendent of Indian affairs, to reside at St. Louis, &c.

And an agent in East and West Florida.

Approved, May 6, 1822.

Statute I.

May 7, 1822.

Chap. LXI.—*An Act to continue in force "An act declaring the consent of Congress to acts of the state of South Carolina, authorizing the city council of Charleston to impose and collect a duty on the tonnage of vessels from foreign ports; and to acts of the state of Georgia, authorizing the imposition and collection of a duty on the tonnage of vessels in the ports of Savannah and St. Mary's."*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the act, entitled "An act declaring the consent of Congress to acts of the state of South Carolina, authorizing the city council of Charleston to impose and collect a duty on the tonnage of vessels from foreign ports; and to acts of the state of Georgia, authorizing the imposition and collection of a duty on the tonnage of vessels in the ports of Savannah and St. Mary's," passed the twenty-ninth of April, one thousand eight hundred and sixteen, shall be, and the same is hereby, continued in force for three years, and to the end of the next session of Congress thereafter: *Provided, always, and it is hereby further enacted*, That it shall be the duty of the city council of Charleston, and of the collectors of the ports of Savannah and St. Mary's, to transmit to the Secretary of the Treasury an annual account of the sums collected, and of the application of the same, for the purposes aforesaid.

The act of April 29, 1816, ch. 163, declaring the assent of Congress to acts of South Carolina and Georgia, continued for three years, &c.

Proviso.

Approved, May 7, 1822.

money in the treasury not otherwise appropriated, be, and is hereby, appropriated, and placed at the disposal of the Secretary of the Navy.

APPROVED, June 30, 1834.

STATUTE I.

JUNE 30, 1834.

CHAP. CLXI.—*An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.* (a)

Parts of territory of United States to be deemed Indian country.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all that part of the United States west of the Mississippi, and not within the states of Missouri and Louisiana, or the territory of Arkansas, and, also, that part of the United States east of the Mississippi river, and not within any state to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country.

Persons trading with Indians to be licensed.

SEC. 2. *And be it further enacted,* That no person shall be permitted to trade with any of the Indians (in the Indian country) without a license therefor from a superintendent of Indian affairs, or Indian agent, or sub-agent, which license shall be issued for a term not exceeding two years for the tribes east of the Mississippi, and not exceeding three years for the tribes west of that river. And the person applying for such license shall give bond in a penal sum not exceeding five thousand dollars, with one or more sureties, to be approved by the person issuing the same, conditioned that such person will faithfully observe all the laws and regulations made for the government of trade and intercourse with the Indian tribes, and in no respect violate the same. And the superintendent of the district shall have power to revoke and cancel the same, whenever the person licensed shall, in his opinion, have transgressed any of the laws or regulations provided for the government of trade and intercourse with the Indian tribes, or that it would be improper to permit him to remain in the Indian country. And no trade with the said tribes shall be carried on within their boundary, except at certain suitable and convenient places, to be designated from time to time by the superintendents, agents, and sub-agents, and to be inserted in the license. And it shall be the duty of the persons granting or revoking such licenses, forthwith to report the same to the commissioner of Indian affairs, for his approval or disapproval.

Licenses may be refused, or, if granted, may be revoked.

SEC. 3. *And be it further enacted,* That any superintendent or agent may refuse an application for a license to trade, if he is satisfied that the applicant is a person of bad character, or that it would be improper to permit him to reside in the Indian country, or if a license, previously granted to such applicant, has been revoked, or a forfeiture of his bond decreed. But an appeal may be had from the agent or the superintendent, to the commissioner of Indian affairs; and the President of the United States shall be authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, and to direct all licenses to trade with such tribe to be revoked, and all applications therefor to be rejected; and no trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued.

Forfeiture of goods and fine for trading without license.

SEC. 4. *And be it further enacted,* That any person other than an Indian who shall attempt to reside in the Indian country as a trader, or to introduce goods, or to trade therein without such license, shall forfeit all mer-

---

(a) Notes of the acts for the preservation of peace with the Indian tribes, vol. ii. p. 6.
Notes of the regulations of intercourse with the Indian tribes, vol. ii. p. 139.
Notes of the decisions of the Supreme Court of the United States on the subject of the Indians, vol. ii. p. 146.
Note of obsolete acts relating to trading houses with the Indians, vol. ii. p. 632.

chandise offered for sale to the Indians, or found in his possession, and shall moreover forfeit and pay the sum of five hundred dollars.

Citizens only to be licensed.

Proviso.

SEC. 5. *And be it further enacted*, That no license to trade with the Indians shall be granted to any persons except citizens of the United States: *Provided*, That the President shall be authorized to allow the employment of foreign boatmen and interpreters, under such regulations as he may prescribe.

Foreigners to obtain passports to go into the Indian country.

SEC. 6. *And be it further enacted*, That if a foreigner shall go into the Indian country without a passport from the War Department, the superintendant, agent, or sub-agent of Indian affairs, or from the officer of the United States commanding the nearest military post on the frontiers, or shall remain intentionally therein after the expiration of such passport, he shall forfeit and pay the sum of one thousand dollars; and such passport shall express the object of such person, the time he is allowed to remain, and the route he is to travel.

Indians only to barter with Indians.

SEC. 7. *And be it further enacted*, That if any person other than an Indian shall, within the Indian country, purchase or receive of any Indian, in the way of barter, trade, or pledge, a gun, trap, or other article commonly used in hunting, any instrument of husbandry or cooking utensils of the kind commonly obtained by the Indians in their intercourse with the white people, or any other article of clothing, except skins or furs, he shall forfeit and pay the sum of fifty dollars.

No other persons than Indians to trap in their limits.

SEC. 8. *And be it further enacted*, That if any person, other than an Indian, shall, within the limits of any tribe with whom the United States shall have existing treaties, hunt, or trap, or take and destroy, any peltries or game, except for subsistence in the Indian country, such person shall forfeit the sum of five hundred dollars, and forfeit all the traps, guns, and ammunition in his possession, used or procured to be used for that purpose, and peltries so taken.

Cattle not to be driven for forage on Indian lands.

SEC. 9. *And be it further enacted*, That if any person shall drive, or otherwise convey any stock of horses, mules, or cattle, to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, such person shall forfeit the sum of one dollar for each animal of such stock.

Intruders may be removed.

SEC. 10. *And be it further enacted*, That the superintendent of Indian affairs, and Indian agents and sub-agents, shall have authority to remove from the Indian country all persons found therein contrary to law; and the President of the United States is authorized to direct the military force to be employed in such removal.

Settlers may be driven off by military force.

SEC. 11. *And be it further enacted*, That if any person shall make a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or shall survey or shall attempt to survey such lands, or designate any of the boundaries by marking trees, or otherwise, such offender shall forfeit and pay the sum of one thousand dollars. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force, as he may judge necessary to remove from the lands as aforesaid any such person as aforesaid.

Purchases or grants from Indians invalid.

SEC. 12. *And be it further enacted*, That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the constitution. And if any person, not employed under the authority of the United States, shall attempt to negotiate such treaty or convention, directly or indirectly, to treat with any such nation or tribe of Indians, for the title or purchase of any lands by them held or claimed, such person shall forfeit and pay one thousand dollars: *Provided, nevertheless*, That it shall be lawful for the agent or agents of any state who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner or commis-

Proviso.

sioners of the United States appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made for their claim to lands within such state, which shall be extinguished by treaty.

Penalty for sending any talk, &c. to disturb the peace.

SEC. 13. *And be it further enacted*, That if any citizen or other person residing within the United States or the territory thereof, shall send any talk, speech, message, or letter to any Indian nation, tribe, chief, or individual, with an intent to produce a contravention or infraction of any treaty or other law of the United States, or to disturb the peace and tranquillity of the United States, he shall forfeit and pay the sum of two thousand dollars.

Persons carrying such talk, &c. fined.

SEC. 14. *And be it further enacted*, That if any citizen, or other person, shall carry or deliver any such talk, message, speech, or letter, to or from any Indian nation, tribe, chief, or individual, from or to any person or persons whatsoever, residing within the United States, or from or to any subject, citizen, or agent of any foreign power or state, knowing the contents thereof, he shall forfeit and pay the sum of one thousand dollars.

Persons corresponding with foreign powers, with similar intent, to be fined.

SEC. 15. *And be it further enacted*, That if any citizen or other person, residing or living among the Indians, or elsewhere within the territory of the United States, shall carry on a correspondence, by letter or otherwise, with any foreign nation or power, with an intent to induce such foreign nation or power to excite any Indian nation, tribe, chief, or individual, to war against the United States, or to the violation of any existing treaty; or in case any citizen or other person shall alienate, or attempt to alienate, the confidence of any Indian or Indians from the government of the United States, he shall forfeit the sum of one thousand dollars.

Property of friendly Indians injured or destroyed to be paid for in twice its value.

SEC. 16. *And be it further enacted*, That where, in the commission, by a white person, of any crime, offence, or misdemeanor, within the Indian country, the property of any friendly Indian is taken, injured or destroyed, and a conviction is had for such crime, offence, or misdemeanor, the person so convicted shall be sentenced to pay to such friendly Indian to whom the property may belong, or whose person may be injured, a sum equal to twice the just value of the property so taken, injured, or destroyed. And if such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the treasury of the United States: *Provided*, That no such Indian shall be entitled to any payment, out of the treasury of the United States, for any such property, if he, or any of the nation to which he belongs, shall have sought private revenge, or attempted to obtain satisfaction by any force or violence: *And provided, also*, That if such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the treasury, as aforesaid.

Proviso.

Proviso.

Indemnification to be made for property taken or destroyed in certain cases.

SEC. 17. *And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from the Indian country into any state or territory inhabited by citizens of the United States, and there take, steal, or destroy, any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or sub-agent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding twelve months, it shall be the duty of such superintendent, agent, or sub-agent, to make return of his doings to the commissioner of Indian affairs, that such further steps may be taken as shall be proper, in the opinion of the

President, to obtain satisfaction for the injury; and, in the mean time, in respect to the property so taken, stolen or destroyed, the United States guaranty, to the party so injured, an eventual indemnification: *Provided*, That, if such injured party, his representative, attorney, or agent, shall, in any way, violate any of the provisions of this act, by seeking or attempting to obtain private satisfaction or revenge, he shall forfeit all claim upon the United States for such indemnification: *And provided, also*, That, unless such claim shall be presented within three years after the commission of the injury, the same shall be barred. And if the nation or tribe to which such Indian may belong, receive an annuity from the United States, such claim shall, at the next payment of the annuity, be deducted therefrom, and paid to the party injured; and, if no annuity is payable to such nation or tribe, then the amount of the claim shall be paid from the treasury of the United States: *Provided*, That nothing herein contained shall prevent the legal apprehension and punishment of any Indians having so offended.

Proviso.

Proviso.

Superintendents, &c., may take depositions.

SEC. 18. *And be it further enacted*, That the superintendents, agents, and sub-agents, within their respective districts, be, and are hereby, authorized and empowered to take depositions of witnesses touching any depredations, within the purview of the two preceding sections of this act, and to administer an oath to the deponents.

Arrest and trial of accused Indians.

SEC. 19. *And be it further enacted*, That it shall be the duty of the superintendents, agents, and sub-agents, to endeavour to procure the arrest and trial of all Indians accused of committing any crime, offence, or misdemeanor, and all other persons who may have committed crimes or offences within any state or territory, and have fled into the Indian country, either by demanding the same of the chiefs of the proper tribe, or by such other means as the President may authorize; and the President may direct the military force of the United States to be employed in the apprehension of such Indians, and for preventing or terminating hostilities between any of the Indian tribes.

Penalty for disposing of spirituous liquors to Indians.

SEC. 20. *And be it further enacted*, That if any person shall sell, exchange, or give, barter, or dispose of, any spirituous liquor or wine to an Indian, (in the Indian country,) such person shall forfeit and pay the sum of five hundred dollars; and if any person shall introduce, or attempt to introduce, any spirituous liquor or wine into the Indian country, except such supplies as shall be necessary for the officers of the United States and troops of the service, under the direction of the War Department, such person shall forfeit and pay a sum not exceeding three hundred dollars; and if any superintendent of Indian affairs, Indian agent, or sub-agent, or commanding officer of a military post, has reason to suspect, or is informed, that any white person or Indian is about to introduce, or has introduced, any spirituous liquor or wine into the Indian country, in violation of the provisions of this section, it shall be lawful for such superintendent, Indian agent, or sub-agent, or military officer, agreeably to such regulations as may be established by the President of the United States, to cause the boats, stores, packages, and places of deposit of such person to be searched, and if any such spirituous liquor or wine is found, the goods, boats, packages, and peltries of such persons shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the use of the informer, and the other half to the use of the United States; and if such person is a trader, his license shall be revoked and his bond put in suit. And it shall moreover be lawful for any person, in the service of the United States, or for any Indian, to take and destroy any ardent spirits or wine found in the Indian country, excepting military supplies as mentioned in this section.

Search may be made for such liquors.

Liquors may be destroyed.

Penalty for setting up a distillery.

SEC. 21. *And be it further enacted*, That if any person whatever shall, within the limits of the Indian country, set up or continue any distillery

for manufacturing ardent spirits, he shall forfeit and pay a penalty of one thousand dollars; and it shall be the duty of the superintendent of Indian affairs, Indian agent, or sub-agent, within the limits of whose agency the same shall be set up or continued, forthwith to destroy and break up the same; and it shall be lawful to employ the military force of the United States in executing that duty.

In trials about property, burden of proof to rest on the white person.

SEC. 22. *And be it further enacted*, That in all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership.

Apprehension of persons violating the provisions of this act.

SEC. 23. *And be it further enacted*, That it shall be lawful for the military force of the United States to be employed in such manner and under such regulations as the President may direct, in the apprehension of every person who shall or may be found in the Indian country, in violation of any of the provisions of this act, and him immediately to convey from said Indian country, in the nearest convenient and safe route, to the civil authority of the territory or judicial district in which said person shall be found, to be proceeded against in due course of law; and also, in the examination and seizure of stores, packages, and boats, authorized by the twentieth section of this act, and in preventing the introduction of persons and property into the Indian country contrary to law; which persons and property shall be proceeded against according to law: *Provided*, That no person apprehended by military force as aforesaid, shall be detained longer than five days after the arrest and before removal. And all officers and soldiers who may have any such person or persons in custody shall treat them with all the humanity which the circumstances will possibly permit; and every officer or soldier who shall be guilty of maltreating any such person while in custody, shall suffer such punishment as a court-martial shall direct.

Proviso.

Indian country annexed, for legal purposes, to the district of Missouri, &c.

SEC. 24. *And be it further enacted*, That for the sole purpose of carrying this act into effect, all that part of the Indian country west of the Mississippi river, that is bounded north by the north line of lands assigned to the Osage tribe of Indians, produced east to the state of Missouri: west, by the Mexican possessions; south, by Red river; and east, by the west line of the territory of Arkansas and the state of Missouri, shall be, and hereby is, annexed to the territory of Arkansas; and that for the purpose aforesaid, the residue of the Indian country west of the said Mississippi river shall be, and hereby is, annexed to the judicial district of Missouri; and for the purpose aforesaid, the several portions of Indian country east of the said Mississippi river, shall be, and are hereby, severally annexed to the territory in which they are situate.

Laws of the United States in force in certain cases.

Proviso.

SEC. 25. *And be it further enacted*, That so much of the laws of the United States as provides for the punishment of crimes committed within any place within the sole and exclusive jurisdiction of the United States, shall be in force in the Indian country: *Provided*, The same shall not extend to crimes committed by one Indian against the person or property of another Indian.

Offenders against this act may be arrested in any state or territory.

SEC. 26. *And be it further enacted*, That if any person who shall be charged with a violation of any of the provisions or regulations of this act, shall be found within any of the United States, or either of the territories, such offenders may be there apprehended, and transported to the territory or judicial district having jurisdiction of the same.

How penalties shall be sued for.

SEC. 27. *And be it further enacted*, That all penalties which shall accrue under this act, shall be sued for and recovered in an action of debt, in the name of the United States, before any court having jurisdiction of the same, (in any state or territory in which the defendant shall be arrested or found,) the one half to the use of the informer, and the other half to the use of the United States, except when the prosecution

shall be first instituted on behalf of the United States, in which case the whole shall be to their use.

Proceedings against goods or other property.

SEC. 28. *And be it further enacted*, That when goods or other property shall be seized for any violation of this act, it shall be lawful for the person prosecuting on behalf of the United States to proceed against such goods, or other property, in the manner directed to be observed in the case of goods, wares, or merchandise brought into the United States in violation of the revenue laws.

Certain acts and parts of acts repealed.

Act of May 13, 1800, ch. 68.

Act of March 30, 1802, ch. 13.

Act of April 29, 1816, ch. 163.

1817, ch. 92.

Act of April 16, 1818, ch. 66.

Act of April 20, 1818, ch. 104.

Act of Feb. 24, 1819, ch. 43.

Act of March 3, 1819, ch. 87.

Act of March 3, 1819, ch. 80.

Act of May 6, 1822, ch. 56.

Act of May 18, 1824, ch. 89.

Act of May 25, 1824, ch. 146.

Act of May 20, 1826, ch. 126.

Act of Feb. 25, 1831, ch. 22.

SEC. 29. *And be it further enacted*, That the following acts and parts of acts shall be, and the same are hereby, repealed, namely: An act to make provision relative to rations for Indians, and to their visits to the seat of government, approved May thirteen, eighteen hundred; an act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, approved March thirty, eighteen hundred and two; an act supplementary to the act passed thirtieth March, eighteen hundred and two, to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, approved April twenty-nine, eighteen hundred and sixteen; an act for the punishment of crimes and offences committed within the Indian boundaries, approved March three, eighteen hundred and seventeen; the first and second sections of the act directing the manner of appointing Indian agents, and continuing the "Act establishing trading-houses with the Indian tribes," approved April sixteen, eighteen hundred and eighteen; an act fixing the compensation of Indian agents and factors, approved April twenty, eighteen hundred and eighteen; an act supplementary to the act entitled "An act to provide for the prompt settlement of public accounts," approved February twenty-four, eighteen hundred and nineteen; the eighth section of the act making appropriations to carry into effect treaties concluded with several Indian tribes therein mentioned, approved March three, eighteen hundred and nineteen; the second section of the act to continue in force for a further time the act entitled "An act for establishing trading-houses with the Indian tribes, and for other purposes," (a) approved March three, eighteen hundred and nineteen; an act to amend an act entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved thirtieth of March, eighteen hundred and two, approved May six, eighteen hundred and twenty-two; an act providing for the appointment of an agent for the Osage Indians west of the state of Missouri and territory of Arkansas, and for other purposes, approved May eighteen, eighteen hundred and twenty-four; the third, fourth, and fifth sections of "An act to enable the President to hold treaties with certain Indian tribes, and for other purposes," approved May twenty-five, eighteen hundred and twenty-four; the second section of the "Act to aid certain Indians of the Creek nation in their removal to the west of the Mississippi," approved May twenty, eighteen hundred and twenty-six; and an act to authorize the appointment of a sub-agent to the Winnebago Indians on Rock river, approved February twenty-five, eighteen hundred and thirty-one: *Provided, however*, That such repeal shall not effect [affect] any rights acquired, or punishments, penalties, or forfeitures incurred, under either of the acts or parts of acts, nor impair or affect the intercourse act of eighteen hundred and two, so far as the same relates to or concerns Indian tribes residing east of the Mississippi: *And provided also*, That such repeal shall not be construed to revive any acts or parts of acts repealed by either of the acts or sections herein described.

Provisa.

1802, ch. 13.

Proviso.

Agents for the Western territory to execute duties, &c.

SEC. 30. *And be it further enacted*, That until a western territory shall be established, the two agents for the Western territory, as provided in the act for the organization of the Indian department, this day ap-

(a) This act is entitled "An act to continue in force, for a further time, the act entitled 'An act for establishing trading-houses with the Indian tribes, and for other purposes,'" March 3, 1819, ch. 80.

proved by the President, shall execute the duties of agents for such tribes as may be directed by the President of the United States. And it shall be competent for the President to assign to one of the said agents, in addition to his proper duties, the duties of superintendent for such district of country or for such tribes as the President may think fit. And the powers of the superintendent at St. Louis, over such district or tribes as may be assigned to such acting superintendent, shall cease: *Provided*, That no additional compensation shall be allowed for such services.

APPROVED, June 30, 1834.

STATUTE I.

June 30, 1834.

CHAP. CLXII.—*An Act to provide for the organization of the department of Indian affairs.* (a)

Duties of governors of Florida and Arkansas as superintendents to cease.

Duties of governor of Michigan to cease.

Salary.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the duties of the governors of the territories of Florida and Arkansas, as superintendents of Indian affairs, shall hereafter cease, and the duties of the governor of the territory of Michigan, as superintendent of Indian affairs, shall cease from and after the establishment of a new territory, embracing the country west of Lake Michigan, should such a territory be established. And while the governor of the said territory of Michigan continues to act as superintendent of Indian affairs, he shall receive therefor, the annual sum of one thousand dollars, in full of all allowances, emoluments, or compensation for services in said capacity.

A superintendent to reside at St. Louis.

SEC. 2. *And be it further enacted*, That there shall be a superintendency of Indian affairs for all the Indian country not within the bounds of any state or territory west of the Mississippi river, the superintendent of which shall reside at St. Louis, and shall annually receive a salary of fifteen hundred dollars.

Duties of superintendents.

SEC. 3. *And be it further enacted*, That superintendents of Indian affairs shall, within their several superintendencies, exercise a general supervision and control over the official conduct and accounts of all officers and persons employed by the government in the Indian department, under such regulations as shall be established by the President of the United States: and may suspend such officers and persons from their office or employments, for reasons forthwith to be communicated to the Secretary of War.

SEC. 4. *And be it further enacted*, That the following Indian agents shall

---

(a) *Acts relating to the Indians, passed subsequent to June 30, 1834.*

An act to regulate, in certain cases, the disposition of the proceeds of land ceded by the Indian tribes, January 9, 1837, ch. 1.

An act to extend the jurisdiction of the district court for the district of Arkansas, March 1, 1837, ch. 18.

Provision for the removal of the Creeks, act of March 3, 1837, ch. 31.

An act for the appointment of commissioners to adjust the claims to reservations of land under the fourteenth article of the treaty of 1830, with the Choctaw Indians, March 3, 1837, ch. 29.

An act to authorize and sanction the sales of reserves provided for the Creek Indians in the treaty of March 24, 1832, in certain cases, and for other purposes, March 3, 1837, ch. 41.

An act to provide for the payment of the annuities which will become due and payable to the Great and Little Osages, in the year 1838, and for other purposes, January 16, 1838, ch. 3.

An act to amend an act entitled "An act for the appointment of commissioners to adjust the claims to reservations of land under the fourteenth article of the treaty of 1830, with the Choctaw Indians," February 22, 1838, ch. 12.

Choctaw lands reserved from sale or pre-emption, June 22, 1838, ch. 119, sec. 1.

An act to authorize the issuing of patents to the last bona fide transferee of reservations under the treaty between the United States and the Creek tribe of Indians, which was concluded on the 24th March, 1832. July 5, 1838, ch. 161.

An act to provide for the location and temporary support of the Seminole Indians removed from Florida, February 13, 1839, ch. 24.

Brothertown Indians, March 3, 1839, ch. 83. Act of June 15, 1844, ch. 84.

An act to provide for the satisfaction of claims arising under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit Creek, concluded in September, 1830. August 23, 1842, ch. 167.

An act supplementary to the act entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," passed 30th June, 1834. June 17, 1844, ch. 102.

Treaty between the United States of America and the Navajo Tribe of Indians; Concluded June 1, 1868; Ratification advised July 25, 1868; Proclaimed August 12, 1868.

ANDREW JOHNSON,

June 1, 1868.

PRESIDENT OF THE UNITED STATES OF AMERICA,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING:

Preamble. WHEREAS a treaty was made and concluded at Fort Sumner, in the Territory of New Mexico, on the first day of June, in the year of our Lord one thousand eight hundred and sixty-eight, by and between Lieutenant-General W. T. Sherman and Samuel F. Tappan, commissioners, on the part of the United States, and Barboncito, Armijo, and other chiefs and headmen of the Navajo tribe of Indians, on the part of said Indians, and duly authorized thereto by them, which treaty is in the words and figures following, to wit: —

Contracting parties. Articles of a treaty and agreement made and entered into at Fort Sumner, New Mexico, on the first day of June, one thousand eight hundred and sixty-eight, by and between the United States, represented by its commissioners, Lieutenant-General W. T. Sherman and Colonel Samuel F. Tappan, of the one part, and the Navajo nation or tribe of Indians, represented by their chiefs and headmen, duly authorized and empowered to act for the whole people of said nation or tribe, (the names of said chiefs and headmen being hereto subscribed,) of the other part, witness: —

Peace and friendship. ARTICLE I. From this day forward all war between the parties to this agreement shall forever cease. The government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they now pledge their honor to keep it.

Offenders among the whites to be arrested and punished; If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington city, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also to reimburse the injured persons for the loss sustained.

among the Indians, to be given up to the United States, on, &c. If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Navajo tribe agree that they will, on proof made to their agent, and on notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws; and in case they wilfully refuse so to do, the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due to them under this treaty, or any others that may be made with the United States. And the President may prescribe such rules and regulations for ascertaining damages under this article as in his judgment may be proper; but no such damage shall be adjusted and paid until examined and passed upon by the Commissioner

Rules for ascertaining damages.

of Indian Affairs, and no one sustaining loss whilst violating, or because of his violating, the provisions of this treaty or the laws of the United States, shall be reimbursed therefor.

Reservation boundaries.

ARTICLE II. The United States agrees that the following district of country, to wit: bounded on the north by the 37th degree of north latitude, south by an east and west line passing through the site of old Fort Defiance, in Cañon Bonito, east by the parallel of longitude which, if prolonged south, would pass through old Fort Lyon, or the Ojo-de-oso, Bear Spring, and west by a parallel of longitude about 109° 30′ west of Greenwich, provided it embraces the outlet of the Cañon-de-Chilly, which cañon is to be all included in this reservation, shall be, and the same is hereby, set apart for the use and occupation of the Navajo tribe of Indians, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit among them; and the United States agrees that no persons except those herein so authorized to do, and except such officers, soldiers, agents, and employés of the government, or of the Indians, as may be authorized to enter upon Indian reservations in discharge of duties imposed by law, or the orders of the President, shall ever be permitted to pass over, settle upon, or reside in, the territory described in this article.

Who not to reside thereon.

Buildings to be erected by the United States.

ARTICLE III. The United States agrees to cause to be built, at some point within said reservation, where timber and water may be convenient, the following buildings: a warehouse, to cost not exceeding twenty-five hundred dollars; an agency building for the residence of the agent, not to cost exceeding three thousand dollars; a carpenter shop and blacksmith shop, not to cost exceeding one thousand dollars each; and a school-house and chapel, so soon as a sufficient number of children can be induced to attend school, which shall not cost to exceed five thousand dollars.

Agent to make his home and reside where.

ARTICLE IV. The United States agrees that the agent for the Navajos shall make his home at the agency building; that he shall reside among them, and shall keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by or against the Indians as may be presented for investigation, as also for the faithful discharge of other duties enjoined by law. In all cases of depredation on person or property he shall cause the evidence to be taken in writing and forwarded, together with his finding, to the Commissioner of Indian Affairs, whose decision shall be binding on the parties to this treaty.

His duties.

Heads of families desiring to commence farming may select lands, &c.

ARTICLE V. If any individual belonging to said tribe, or legally incorporated with it, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding one hundred and sixty acres in extent, which tract, when so selected, certified, and recorded in the "land book" as herein described, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

Effect of such selection.

Persons not heads of families.

Any person over eighteen years of age, not being the head of a family, may in like manner select, and cause to be certified to him or her for purposes of cultivation, a quantity of land, not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

Certificate of selection to be delivered, &c.;

to be recorded.

For each tract of land so selected a certificate containing a description thereof, and the name of the person selecting it, with a certificate endorsed thereon, that the same has been recorded, shall be delivered to the party entitled to it by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the "Navajo Land Book."

The President may at any time order a survey of the reservation, and when so surveyed, Congress shall provide for protecting the rights of said settlers in their improvements, and may fix the character of the title held by each. Survey.

The United States may pass such laws on the subject of alienation and descent of property between the Indians and their descendants as may be thought proper. Alienation and descent of property.

ARTICLE VI. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as may be settled on said agricultural parts of this reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that, for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher. Children between six and sixteen to attend school. Duty of agent. School-houses and teachers.

The provisions of this article to continue for not less than ten years.

ARTICLE VII. When the head of a family shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year, not exceeding in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of two years, he shall be entitled to receive seeds and implements to the value of twenty-five dollars. Seeds and agricultural implements.

ARTICLE VIII. In lieu of all sums of money or other annuities provided to be paid to the Indians herein named under any treaty or treaties heretofore made, the United States agrees to deliver at the agency house on the reservation herein named, on the first day of September of each year for ten years, the following articles, to wit: Delivery of articles in lieu of money and annuities.

Such articles of clothing, goods, or raw materials in lieu thereof, as the agent may make his estimate for, not exceeding in value five dollars per Indian — each Indian being encouraged to manufacture their own clothing, blankets, &c.; to be furnished with no article which they can manufacture themselves. And, in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and exact census of the Indians, on which the estimate from year to year can be based. Clothing, &c. Indians to be furnished with no articles they can make. Census.

And in addition to the articles herein named, the sum of ten dollars for each person entitled to the beneficial effects of this treaty shall be annually appropriated for a period of ten years, for each person who engages in farming or mechanical pursuits, to be used by the Commissioner of Indian Affairs in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper; and if within the ten years at any time it shall appear that the amount of money needed for clothing, under the article, can be appropriated to better uses for the Indians named herein, the Commissioner of Indian Affairs may change the appropriation to other purposes, but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named, provided they remain at peace. And the President shall annually detail an officer of the army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery. Annual appropriations in money for ten years; may be changed. Army officer to attend delivery of goods, &c.

ARTICLE IX. In consideration of the advantages and benefits conferred by this treaty, and the many pledges of friendship by the United Stipulations by the Indians

as to outside territory; States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy any territory outside their reservation, as herein defined, but retain the right to hunt on any unoccupied lands contiguous to their reservation, so long as the large game may range thereon in such numbers as to justify the chase; and they, the said Indians, further expressly agree:

railroads; 1st. That they will make no opposition to the construction of railroads now being built or hereafter to be built across the continent.

2nd. That they will not interfere with the peaceful construction of any railroad not passing over their reservation as herein defined.

residents, travellers, wagon trains; 3rd. That they will not attack any persons at home or travelling, nor molest or disturb any wagon trains, coaches, mules or cattle belonging to the people of the United States, or to persons friendly therewith.

women and children; 4th. That they will never capture or carry off from the settlements women or children.

scalping; 5th. They will never kill or scalp white men, nor attempt to do them harm.

roads or stations; 6th. They will not in future oppose the construction of railroads, wagon roads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States; but should such roads or other works be constructed on the lands of their reservation, the government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or head man of the tribe.

damages;

military posts and roads. 7th. They will make no opposition to the military posts or roads now established, or that may be established, not in violation of treaties heretofore made or hereafter to be made with any of the Indian tribes.

Cession of reservation not to be valid, unless, &c. ARTICLE X. No future treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force against said Indians unless agreed to and executed by at least three fourths of all the adult male Indians occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in article —— of this treaty.

Indians to go to reservation when required. ARTICLE XI. The Navajos also hereby agree that at any time after the signing of these presents they will proceed in such manner as may be required of them by the agent, or by the officer charged with their removal, to the reservation herein provided for, the United States paying for their subsistence en route, and providing a reasonable amount of transportation for the sick and feeble.

Appropriations how to be disbursed. ARTICLE XII. It is further agreed by and between the parties to this agreement that the sum of one hundred and fifty thousand dollars appropriated or to be appropriated shall be disbursed as follows, subject to any conditions provided in the law, to wit:

Removal. 1st. The actual cost of the removal of the tribe from the Bosque Redondo reservation to the reservation, say fifty thousand dollars.

Sheep and goats. 2nd. The purchase of fifteen thousand sheep and goats, at a cost not to exceed thirty thousand dollars.

Cattle and corn. 3rd. The purchase of five hundred beef cattle and a million pounds of corn, to be collected and held at the military post nearest the reservation, subject to the orders of the agent, for the relief of the needy during the coming winter.

Remainder. 4th. The balance, if any, of the appropriation to be invested for the maintenance of the Indians pending their removal, in such manner as the agent who is with them may determine.

Removal, how made. 5th. The removal of this tribe to be made under the supreme control and direction of the military commander of the Territory of New Mex-

ico, and when completed, the management of the tribe to revert to the proper agent.

ARTICLE XIII. The tribe herein named, by their representatives, parties to this treaty, agree to make the reservation herein described their permanent home, and they will not as a tribe make any permanent settlement elsewhere, reserving the right to hunt on the lands adjoining the said reservation formerly called theirs, subject to the modifications named in this treaty and the orders of the commander of the department in which said reservation may be for the time being; and it is further agreed and understood by the parties to this treaty, that if any Navajo Indian or Indians shall leave the reservation herein described to settle elsewhere, he or they shall forfeit all the rights, privileges, and annuities conferred by the terms of this treaty; and it is further agreed by the parties to this treaty, that they will do all they can to induce Indians now away from reservations set apart for the exclusive use and occupation of the Indians, leading a nomadic life, or engaged in war against the people of the United States, to abandon such a life and settle permanently in one of the territorial reservations set apart for the exclusive use and occupation of the Indians.

Reservation to be permanent home of Indians.

Penalty for leaving reservation.

In testimony of all which the said parties have hereunto, on this the first day of June, one thousand eight hundred and sixty-eight, at Fort Sumner, in the Territory of New Mexico, set their hands and seals.

Execution.

W. T. SHERMAN,
Lt. Gen'l, Indian Peace Commissioner.
S. F. TAPPAN,
Indian Peace Commissioner.

BARBONCITO, Chief.	his x mark.
ARMIJO.	his x mark.
DELGADO.	
MANUELITO.	his x mark.
LARGO.	his x mark.
HERRERO.	his x mark.
CHIQUETO.	his x mark.
MUERTO DE HOMBRE.	his x mark.
HOMBRO	his x mark.
NARBONO.	his x mark.
NARBONO SEGUNDO.	his x mark.
GAÑADO MUCHO.	his x mark.

Council.

RIQUO.	his x mark.
JUAN MARTIN.	his x mark.
SERGINTO.	his x mark.
GRANDE.	his x mark.
INOETENITO.	his x mark.
MUCHACHOS MUCHO.	his x mark.
CHIQUETO SEGUNDO:	his x mark.
CABELLO AMARILLO.	his x mark.
FRANCISCO.	his x mark.
TORIVIO.	his x mark.
DESDENDADO.	his x mark.
JUAN.	his x mark.
GUERO.	his x mark.
GUGADORE.	his x mark.
CABASON.	his x mark.
BARBON SEGUNDO.	his x mark.
CABARES COLORADOS.	his x mark.

Attest:
GEO. W. G. GETTY,
Col. 37th Inf'y, Bt. Maj. Gen'l U. S. A.
B. S. ROBERTS,
Bt. Brg. Gen'l U. S. A., Lt. Col. 3d Cav'y.
J. COOPER MCKEE,
Bt. Lt. Col. Surgeon U. S. A.
THEO. H. DODD,
U. S. Indian Ag't for Navajos.
CHAS. MCCLURE,
Bt. Maj. and C. S. U. S. A.
JAMES F. WEEDS,
Bt. Maj. and Asst. Surg. U. S. A.
J. C. SUTHERLAND,
Interpreter.
WILLIAM VAUX,
Chaplain U. S. A.

Ratification. And whereas, the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the twenty-fifth day of July, one thousand eight hundred and sixty-eight, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:—

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES, July 25, 1868.

Resolved, (two-thirds of the senators present concurring,) That the Senate advise and consent to the ratification of the treaty between the United States and the Navajo Indians, concluded at Fort Sumner, New Mexico, on the first day of June, 1868.

Attest:
GEO. C. GORHAM,
Secretary,
By W. J. MCDONALD,
Chief Clerk.

Proclamation. Now, therefore, be it known that I, ANDREW JOHNSON, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution of the twenty-fifth of July, one thousand eight hundred and sixty-eight, accept, ratify, and confirm the said treaty.

In testimony whereof, I have hereto signed my name, and caused the seal of the United States to be affixed.

Done at the City of Washington, this twelfth day of August, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-third. [SEAL.]

ANDREW JOHNSON.

By the President:
W. HUNTER,
Acting Secretary of State.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NORMAN ASHCROFT, et al.,

Petitioners,

vs. No.

THE UNITED STATES DEPARTMENT
OF THE INTERIOR, et al.

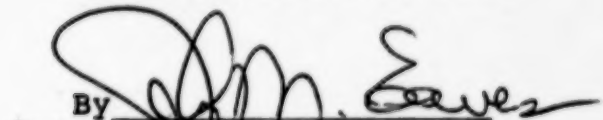
CERTIFICATE OF SERVICE

I, WILLIAM J. DARLING of Eaves and Darling, P.A. hereby certifies that all parties required to be served with the Petition for Writ of Certiorari have been served this 21st day of October, 1982 by depositing with the United States Post Office envelopes containing three copies of said Petition for Writ of Certiorari to the following parties:

1. Solicitor General
Department of Justice
Washington, D.C. 20530

2. Carol E. Dinkins, Esq.
Dirk D. Snel, Esq.
Maria A. Sizuka, Esq.
Department of Justice
Land and Natural Resources Division
Room 2338
Washington, D.C. 20530

EAVES AND DARILNG, P.A.



By _____
FOR WILLIAM J. DARLING
1516 San Pedro NE
Albuquerque, NM 87110
(505)262-2661

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NORMAN ASHCROFT, et al.,

Petitioners,

vs. No.

THE UNITED STATES DEPARTMENT
OF THE INTERIOR, et al.

ENTRY OF APPEARANCE

COMES NOW William J. Darling of Eaves and Darling, P.A., and hereby enters his appearance on behalf of Norman Ashcroft, d/b/a Querino Canyon Superette, Armend Ortega, d/b/a Indian Ruins, and Atkinson's Ltd. of Arizona, this 21st day of October, 1982.

EAVES AND DARILNG, P.A.

By FOR WILLIAM J. DARLING
1516 San Pedro NE
Albuquerque, NM 87110
(505) 262-2661

Supreme Court, U.S.
FILED
[illegible] 21 1983
ALEXANDER L. STEVAS
CLERK

No. 82-720

In the Supreme Court of the United States

OCTOBER TERM, 1982

NORMAN ASHCROFT, ET AL., PETITIONERS

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

REX E. LEE
Solicitor General

CAROL E. DINKINS
Assistant Attorney General

DIRK D. SNEL
MARIA A. IIZUKA
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

1. Whether businesses operated on fee land held by non-Indians within the boundaries of the Navajo Reservation are "reservation businesses" within the meaning of 25 C.F.R. 252.3(*l*) and thus subject to federal licensing requirements under 25 C.F.R. Part 252.

2. Whether fee patent land located within the boundaries of the Navajo Reservation is "Indian Country" under 18 U.S.C. 1151.

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Statement 1

Argument 3

Conclusion 9

TABLE OF AUTHORITIES

Cases:

Central Machinery Co. v. *Arizona Tax Commission*, 448 U.S. 160 ..... 4, 5, 6

DeCoteau v. *District County Court*, 420 U.S. 425 ..... 5, 8

Donnelly v. *United States*, 228 U.S. 243 7

Healing v. *Jones*, 210 F. Supp. 125, aff'd, 373 U.S. 758 4

Montana v. *United States*, 450 U.S. 544 ..... 3, 6

Rockbridge v. *Lincoln*, 449 F.2d 567 2

Rosebud Sioux Tribe v. *Kneip*, 430 U.S. 584 5

Seymour v. *Superintendent*, 368 U.S. 351 8

Stevens v. *Commissioner*, 452 F.2d 741 5

United States v. *Jackson*, 280 U.S. 183 5

United States v. *John*, 437 U.S. 634 7

United States v. *Mazurie*, 419 U.S. 544 8

Page

Cases—Continued:

United States v. *Price*, 383 U.S. 787 5

Warren Trading Post Co. v. *Arizona Tax Commission*, 380 U.S. 685 5

Treaty, statutes and regulations:

Treaty of June 1, 1868, 15 Stat. 667 3

Act of June 14, 1934, ch. 521, 48 Stat. 960 4

Indian Trade and Intercourse Act of June 30, 1834, ch. 161, 4 Stat. 729 7

18 U.S.C. (Supp. V) 1151 ..... 3, 6-7, 8

18 U.S.C. (Supp. V) 1151(a) 7-8

18 U.S.C. 1154(c) 8

25 U.S.C. 261-264 2

25 U.S.C. 262 2

25 C.F.R. (1981):

Part 252 (recodified at 25 C.F.R. Part 141) 2, 3

Section 252.3(j) 5
Section 252.3(*l*) 5
Section 252.11(b) 6
Section 252.16 4

Miscellaneous:

H.R. Rep. No. 474, 23d Cong., 1st Sess. (1834) 4

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-720

NORMAN ASHCROFT, ET AL., PETITIONERS

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals as amended (Pet. App. 33-43, 60-61) is reported at 679 F.2d 196. The opinion of the district court (Pet. App. 43-58) is reported at 513 F.Supp. 595.

JURISDICTION

The judgment of the court of appeals was entered on June 9, 1982. A petition for rehearing was denied on September 2, 1982 (Pet. App. 60). The petition was filed as of October 12, 1982, on October 25, 1982. The jurisdiction of this Court is properly invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners are non-Indian owners or operators of businesses located on fee land within the exterior boundaries of the Navajo Reservation.[1] The Bureau of Indian Affairs

[1]The Navajo Reservation consists of approximately 9.1 million acres (E. R. 55; "E.R." denotes the Excerpts of Record filed in the court of

("BIA") of the Department of the Interior notified petitioners that they must comply with procedures set forth in 25 C.F.R. Part 252 (1981), governing business practices on the Navajo, Hopi and Zuni Reservations.[2] The regulations, promulgated in 1975 and thereafter, require, inter alia, that reservation businesses obtain BIA licenses, abide by price marking and credit practices, and refrain from selling fake Indian handicrafts or antiquities from historic ruins or monuments (Pet. App. 67-81).[3]

On February 23, 1978, petitioners sued officials of the Department of the Interior to halt enforcement of the regulations. On March 3, 1978, the district court issued a temporary restraining order which, by stipulation, was to remain in effect pending a decision on the merits. Ruling on stipulated facts and cross-motions for summary judgment, the district court issued a permanent injunction on March 17, 1981, barring enforcement of the regulations as to petitioners' businesses (Pet. App. 59). The district court held that the regulations do not apply to businesses, such as petitioners', that are "conducted on fee owned land which is surrounded by the Navajo Indian Reservation" (Pet. App.

---

appeals). Approximately 11,860 acres are held in fee by individual owners, including these petitioners; the remainder is held in trust by the United States for the benefit of the Tribe or its members.

[2]These regulations have since been recodified at 25 C.F.R. Part 141. For convenience, we shall cite to the earlier codification, which is reproduced in the appendix to the petition (Pet. App. 67-81).

[3]The regulations implement the Indian Trader statutes, now codified at 25 U.S.C. 261-264 (Pet. App. 62). Among other things, those statutes authorize the Commissioner of Indian Affairs to appoint traders to the Indians and to promulgate regulations governing such traders "for the protection of * * * Indians" (25 U.S.C. 262). The regulations were promulgated in compliance with *Rockbridge* v. *Lincoln*, 449 F.2d 567 (9th Cir. 1971), a class action brought on behalf of Navajo Indians to require the Commissioner to adopt and enforce regulations governing traders doing business on the Navajo Reservation.

46) and that the businesses are not located within "Indian Country" as defined in 18 U.S.C. (Supp. V) 1151 (Pet. App. 55-57).

The court of appeals, in reversing the judgment of the district court, held that "businesses conducted on non-Indian fee land within the exterior boundaries of the Navajo Reservation are subject to the regulations at 25 C.F.R. Parts 251 and 252 enacted pursuant to the Indian Trader Statutes" (Pet. App. 40). Relying on this Court's opinion in *Montana* v. *United States*, 450 U.S. 544 (1981), the court of appeals concluded that "[a] tribe retains some elements of sovereignty over all land within reservation boundaries, absent the exclusive jurisdiction of another tribe or that of the federal government * * *. With respect to non-Indian fee land within the reservation, the tribe retains sovereign power to the extent necessary to protect tribal self-government or control internal relations" (Pet. App. 37-38). The court concluded that the BIA's determination that petitioners' businesses were subject to the regulations in 25 C.F.R. Part 252 (1981) was consistent with this "inherent tribal sovereign power" (Pet. App. 39), noting that any other result would thwart the salutory intent of the regulations: "to protect Indians from the sharp practices of unregulated traders" (*id.* at 40).

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. The petition presents no issue warranting further review.

1. Petitioners' entire argument appears to rest on the proposition that there is some critical distinction to be drawn from the fact that their land was not included within the original boundaries of the Navajo Reservation as established by the June 1, 1868, Treaty with the Navajo Indians

(15 Stat. 667), but instead came to be within the boundaries of the reservation as later enlarged by a series of executive orders issued between 1878 and 1907.[4] Whatever may be the consequences of this history in other contexts, it has no logical bearing on the applicability of the Indian Trader statutes and the regulations promulgated thereunder. The focus of those statutes and regulations is the protection of reservation Indians from unscrupulous traders, and it is wholly irrelevant to that purpose how or when petitioners' land came to be surrounded by the Navajo Reservation. It is not plausible to assume that Congress meant to protect only those Indians who trade with businesses located on land that was always within the boundaries of the original reservation, but to leave unprotected Indians who trade with businesses that are located within additions to the original reservation.[5]

Since 1790, "the Federal Government has comprehensively regulated trade with Indians to prevent 'fraud and imposition' upon them." *Central Machinery Co.* v. *Arizona Tax Commission*, 448 U.S. 160, 163 (1980), quoting

---

[4]The executive order additions were confirmed by the Act of June 14, 1934, ch. 521, 48 Stat. 960. See *Healing* v. *Jones*, 210 F.Supp. 125, 141 n.14 (D. Ariz. 1962), aff'd, 373 U.S. 758 (1963).

[5]As the court of appeals correctly recognized (Pet. App. 43 n.3), it is of no consequence that petitioners engage in only a small amount of business with Indians. Nothing in the Indian Trader statutes even remotely suggests a "substantiality" test, nor would it be consistent with the statutes' purposes to deny protection to Indians based on the percentage of a particular establishment's sales to non-Indians. Additionally, as a matter of practical administration, it would be infeasible for Interior to regulate only sales to Indian consumers. The regulation relating to price marking (25 C.F.R. 252.16 (1981)) affords a prime example — Interior cannot possibly know in advance whether the purchaser of a particular item will be an Indian or a non-Indian, and thus it must necessarily require any reservation business that sells to Indians to mark all of its prices in accordance with the regulation if it is to ensure that Indian consumers receive the protection intended by Congress.

H.R. Rep. No. 474, 23d Cong., 1st Sess. 11 (1834); see also *Warren Trading Post Co.* v. *Arizona Tax Commission*, 380 U.S. 685, 686-690 (1965). In light of this purpose, the Court has given the Indian Trader statutes " 'a sweep as broad as [their] language' * * * and interpret[ed] them in light of the intent of the Congress that enacted them * * *." *Central Machinery Co., supra*, 448 U.S. at 166 (citations omitted), quoting *United States* v. *Price*, 383 U.S. 787, 801 (1966). The regulations of the Department of the Interior challenged by petitioners in this case accomplish Congress' purpose by defining "reservation business" as "a person that engages at a fixed location or site within the exterior boundaries of the Navajo * * * Reservation[] in the sale or purchase of goods or services or in consumer credit transactions with Indians * * *" (25 C.F.R. 252.3(*l*)(1981)).[6] Interior's regulation sensibly recognizes that Congress' intention to protect the Indians would be thwarted by any rewording of the definition that would exclude those businesses not located within the original 1868 reservation boundaries, even though such businesses are now unquestionably within the reservation.[7] And, as the agency charged with implementing Congress' enactments for the protection of Indians, Interior's regulation is entitled to special deference (*Stevens* v. *Commissioner*, 452 F.2d 741, 746 (9th Cir. 1971), quoting *United States* v. *Jackson*, 280 U.S. 183, 193 (1930) (citations omitted)):

---

[6]The regulations define "persons" to include "a natural person, a corporation, trust, estate, partnership, cooperative or association" (25 C.F.R. 252.3(j)(1981)).

[7]Petitioners claim support for their argument that fee land outside the original reservation boundaries can never be "Indian country" (Pet. 19) in this Court's decisions in *DeCoteau* v. *District County Court*, 420 U.S. 425 (1975), and *Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584 (1977). Petitioners' reliance on these decisions is misplaced. Both cases construed Acts of Congress that *diminished* the original reservation boundaries; neither case involved land *added* to a reservation by subsequent executive orders and statutes.

> As the agency charged with the administration of the Indian laws and responsible for drafting many of them, Interior's interpretation is entitled to "great weight" and "is not to be overturned unless clearly wrong * * *."

Petitioners have advanced no sound reason, consistent with the purposes of the Indian Trader statutes, for overturning Interior's definition of "reservation business." On the contrary, the restrictive reading of the regulations that petitioners urge on the Court would frustrate "the salutory goal of the statute which is to protect Indians from the sharp practices of unregulated traders * * *" (Pet. App. 40). See also *Central Machinery Co., supra*, 448 U.S. at 165.[8]

2. Petitioners concede that "land which is Indian country, *regardless of ownership*, may be deemed [to be] 'on the reservation' " (Pet. 12; emphasis added; see also Pet. 21), and thus subject to regulation under the Indian Trader statutes. But petitioners erroneously assert, first, that Indian country encompasses only land the Indian title to which has not been extinguished (Pet. 16-18) and, second, that the broader definition of Indian country in 18 U.S.C.

---

[8]There is no occasion for the Court to consider petitioners' assertion (Pet. 24) that the decision below conflicts with *Montana* v. *United States*, 450 U.S. 544 (1981). In *Montana*, the Court addressed only the *tribe's* authority to regulate non-Indian hunting and fishing. In this case, by contrast, it was the BIA, and not the tribe, that sought to enforce the regulations; thus, no question concerning the extent of retained tribal sovereignty is presented. The mere fact that the regulations authorize tribal enforcement (25 C.F.R. 252.11(b)(1981)) does not create a justiciable controversy in the absence of any action by the tribe. In any event, tribal enforcement would be fully consistent with this Court's recognition that "[a] tribe may regulate * * * the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements." *Montana* v. *United States*, *supra*, 450 U.S. at 565.

(Supp. V) 1151[9] is "limited by its own terms to the Federal Criminal Code" (Pet. 19). Both contentions are erroneous.

As early as 1913, this Court rejected petitioners' narrow definition of "Indian country." In *Donnelly* v. *United States*, 228 U.S. 243 (1913), the Court noted that the definition of Indian country contained in the Indian Trade and Intercourse Act of June 30, 1834, ch. 161, 4 Stat. 729, upon which petitioners rely (Pet. 16-17), "was not reenacted in the Revised Statutes and was therefore repealed" (228 U.S. at 269). Although the Court acknowledged that "the definition as contained in the act of 1834 may still be referred to in connection with the provisions of its original context that remain in force * * *,' " the Court nevertheless held that, because " 'the changes which have taken place in our situation' are so numerous and so material," the definition of "Indian country" could no longer "be confined to land formerly held by the Indians, and to which their title remains unextinguished" (*ibid.*). Thus, notwithstanding the fact that "[s]ome earlier cases had suggested a more technical and limited definition of 'Indian country' * * * [i]t is the more expansive scope of the term that was incorporated in the 1948 revision of Title 18." *United States* v. *John*, 437 U.S. 634, 649 n.18 (1978).

Under the curent definition of Indian country, of course, the fact that land is owned in fee by a non-Indian on territory included within the boundaries of a reservation does not in any way affect its status as "Indian country"; 18

---

[9]In pertinent part, 18 U.S.C. (Supp. V) 1151 provides (emphasis added):

> Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country" as used in this chapter, means (a) *all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent*, and, including rights-of-way running through the reservation * * *.

U.S.C. (Supp. V) 1151(a) (see page 7 note 9, *supra*) makes no provision for "jurisdictional enclaves" (Pet. 10, 11) of non-Indian fee land. "[T]he existence or nonexistence of an Indian reservation, and therefore the existence or nonexistence of federal jurisdiction [does not depend] upon the ownership of particular parcels of land * * *." *Seymour* v. *Superintendent*, 368 U.S. 351, 358 (1962).[10]

The Court has also rejected petitioners' contention that 18 U.S.C. (Supp. V) 1151 applies only to criminal cases. See *DeCoteau* v. *District County Court*, 420 U.S. 425, 427 n.2 (1975), and cases cited therein. Thus, having conceded that the Indian Trader statutes are applicable to petitioners' businesses if they are located within "Indian country," and finding no support for a narrow definition of that term in this Court's decisions, petitioners have failed to present an issue warranting this Court's review.

---

[10]Significantly, Congress *has* created "jurisdictional enclaves" of non-Indian fee land in certain circumstances. In 18 U.S.C. 1154(c), Congress enacted a special definition of "Indian country" applicable only to the prohibition on introducing liquor into "Indian country." That statute exempts from the definition of "Indian country" "fee-patented lands within "non-Indian communities" and rights-of-way through reservations." See *United States* v. *Mazurie*, 419 U.S. 544, 547 (1975). Had Congress wanted to create similar "jurisdictional enclaves" for businesses such as petitioners', it thus knew how to do so.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

CAROL E. DINKINS
Assistant Attorney General

DIRK D. SNEL
MARIA A. IIZUKA
Attorneys

JANUARY 1983